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THE PARISH.

ITS POWERS AND OBLIGATIONS
AT LAW,

AS REGARDS THE WELFARE OF EVERY NEIGHBOURHOOD,
AND IN RELATION TO THE STATE:

ITS OFFICERS AND COMMITTEES:

AND

THE RESPONSIBILITY OF EVERY PARISHIONER.

WITH

Illustrations of the Practical Working of this Institution

IN ALL SECULAR AFFAIRS;

AND OF SOME MODERN ATTEMPTS AT ECCLESIASTICAL ENCROACHMENT.

BY

JOSEPH TOULMIN SMITH,
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

"Parishes were instituted for the ease and benefit of the people."—*Chief-Justice Holt.*

"Cum haud pauca quæ omnino fieri neesse sit, alii autem ob innatam superbiam subterfugiant, ipse sustineam et exsequar."—*Bacon, De Augmentis Scientiarum, lib. 7. cap. 1.*

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PREFACE

TO THE SECOND EDITION.

EVERY man's concern with the place where he lives, has something more in it than the mere amount of rates and taxes that he has to pay. In the well-managing of the affairs of his Parish, are directly involved the daily comfort, convenience, and health of every man—rich as well as poor. Lord Palmerston said, on a significant occasion, that what “peculiarly distinguishes the people of these islands from the nations of the Continent, is, that system of local self-government which has been so fortunately established, and by which the affairs of the country are carried on with little interference on the part of the Executive Government. Under that system, the affairs of the country are conducted by the people themselves; *whose own fault it is if they be not conducted to their satisfaction.*”*

That the affairs of every neighbourhood should be, in truth, conducted to the satisfaction of intelligent and conscientious men, nothing can be more necessary than an accessible account of the Parish—the universal Institution of local self-government in England, and of the relations of that Institution to the State, on the one hand, and to every individual on the other; embracing the mode of working of this universal Local Institution, and the duties of all connected with it;—and this, not frozen up in dry technicalism, but dealing with the human reality attaching to an important Institution of free men; and treating it in such a manner as shall stimulate an intelligent

* Speech at Manchester; 6 Nov. 1856.

interest, at the same time that it gives the information which every one needs, in order properly to fulfil his duties to his own neighbourhood.

Such a work it is the aim of the present Volume to supply ; and the reception of the first Edition, and the practical use made of it in many parts of England, enable me now to know that this aim was not wholly unfulfilled by it. This knowledge has, however, only induced me to bestow the greater care in the preparation of a new edition, so that such an aim may be yet better fulfilled.

Perplexed and disheartened as many men naturally are, by the indiscriminate mass of ill-considered, hasty, and perpetually shifting legislation (to use a much abused term) which distinguishes the present day, it has been especially sought, in this work, to show what is Institutional and *permanent* in the Parish and its action ; and what is unaffected, therefore, by this very mischievous and discouraging course. What is thus Institutional and permanent is, happily, that which is of the most practical importance. But it becomes daily more necessary that its importance should be well understood, in order that it may not be forgotten and lost in what is changing and temporary.

The vast multitude and variety of the subjects embraced, and the propriety of treating some of these more fully than was done in the former edition, have increased the size, but I hope more than equivalently the usefulness, of the present edition.

At the same time, in pursuance of suggestions entitled to every respect, I have given, in this edition, more numerous references to the authorities upon which the Principles and Practice affirmed to be the right ones are founded. Many of these additions are put in the shape of full *Notes* ; which the reader of liberal pursuits and enlarged mind will, I venture to think, find not the least interesting part of the present Volume.

On the same suggestion, the latest decided cases in the courts of Law will be found noted, on the points to which they relate.

Every Parishioner, as well as every one who would professionally advise on Parish matters, will thus have, within his immediate reach, the most direct practical information, together with the genuine authorities, on every point that concerns parish action.

The best illustrations of what the Parish, as an Institution, is able to do, are to be got from seeing what the Parish has done. Hence, instead of encumbering these pages with a mass of *forms*, I have given a large body of illustrations from the Bye-Laws and Ordinances and Proceedings of Parishes, on a very great variety of occasions, for three hundred years past. These will be found of the highest interest and value to all seeking to fulfil their duty to their neighbours. The Chapter on "Parish Records" will be found to contain what will help, practically, on almost every occasion where action is needed, and suggestion as to the mode of it is sought.

It may be safely said that there has never before been published such a mass of thoroughly authentic and practically available information on the subject of the Institution and Working of the Parish;—information practically available and important, equally to every man who desires honestly to fulfil his duties to his neighbours and to help the improvement of his neighbourhood, and to the Statesman and Legislator before whose consideration are brought any matters affecting Local and Social well-being.

Deeply feeling, myself, the value of the Institution of which this work treats, and the need of maintaining its full and right action, and well knowing how little either that value or right action is appreciated or understood by many who ought to be better informed, I have spared no pains to point out the actual bearing of each branch treated of, as thoroughly as was consistent with so limited a space. Many matters, essential to the right action of the Parish, but not touched on in any of the ordinary treatises on Parish Law, will be found here included. Such are those of *Bye-Laws*, *Parish Committees*, *Trustees of Charities*, *Enrolment*, *Endowments*, *Ecclesiastical encroachments*, and others. On the last-named point, the great practical signifi-

cance of what is freshly introduced into this edition, cannot fail to be recognized.

I may repeat the hope expressed in the first edition, that a work which is the result of many years' study and practical observation, will serve to help and strengthen that healthy sense of public duty and individual responsibility, the active existence of which in every neighbourhood is the first essential, and only real hope and means, to reaching a high standard of true civilization, and to the maintaining of a Free State.

TOULMIN SMITH.

8, *Serjeants' Inn, Fleet Street :*

Easter, 1857.

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For the pages where the above, together with the numerous other authorities quoted, are to be found, see *Index to Works and Authors cited*, and General Index, '*Rolls of Parliament*,' and '*Year Books*.' For Statutes, see *Table of Statutes*, and for Reports of decided cases, see *Table of Cases cited*, at end of Index.

It will be convenient to the reader, if the following errors of the press are corrected with the pen before perusal. The few literal oversights that may be found besides these, will be too obvious to need notice here.

Page 29, last line of note, for "pp. 94, 95" read "pp. 95, 96."

55, line 4 of note, for "bottom of p. 91" read "top of p. 92."

101, line 3 of note, for "Cro. Car." read "Cro. Jac."

106, line 22, for "1585" read "1555."

130, note †, for "50 Geo. III. c. 4" read "50 Geo. III. c. 41."

136, note §, insert "23 Law" before "Journal Rep."

180, note ||, for "7 & 8 Vict. c. 10" read "7 & 8 Vict. c. 101."

220, line 4 of note, insert a comma after "attacker."

235, line 3 from bottom of note, insert "In" before "1774."

320, line 24, read "pretensions" instead of "pretence."

324, lines 20 and 21, read "this" instead of "his;" and insert the parenthesis mark "(" before "not heeding."

357, note †, for "5 & 6 Wm. IV. c. 5" read "5 & 6 Wm. IV. c. 50."

452, last line of note, for "nominem" read "neminem."

THE PARISH.

INTRODUCTION.

THE Parish, as a Practical Institution, is the subject of this Book. Its object is, to show the practical use and value of the Parish, in all the social and secular relations of men; the practical duties and rights of every Parishioner; and how best that use and those duties may be habitually realized.

Sound practice can never be blind. It must always be intelligent. Unless the parts of a machine are known, and how they mutually act, there can be no intelligent confidence in the result whenever the machine is set in action, and no assuredness of keeping it always in good working order. Practically to secure sound Parish action, the nature of the Institution itself must be thoroughly understood. That nature is part of the Common Law of England. It is the distinguishing feature of this Common Law, that it rests on and affirms *Principles*, which are adaptable to all the changing conditions of human progress. Whether the adaptations tried at any time are good or bad, will depend on whether the Principles themselves are well understood. The mere blind following of precedent, is the certain way to introduce confusion, and to overlay the spirit of the original Principle. And rash attempts to experimentalize, whether by unsettled and shifting "legislation" or by the mere arbitrary dictum of "authority," though undoubtedly a great saving of time and trouble to the experimentalizer, are certain to lead in the end to mischief and confusion to the public, however plausible the immediate pretext, and however neatly

fashioned, theoretically, the new device may be. The relations of human life are, at the least, a subject as difficult, and as impossible to be understood except by careful study, as the relations of chemistry. Empiricism is as contemptible and dangerous in the one case, as in the other. Unfortunately, the superficial habit of mind which deals thus with what, above all subjects, needs the most careful inductive inquiry, is particularly characteristic of our day. Hence the Institution of the Parish is now continually being tampered with, by those who are either entirely unacquainted with and heedless to inquire into, or who find that obstacles to their own selfish purposes exist in, the spirit and fundamental Principles on which the Institutions of their country are founded. Enough instances of this will appear in the course of this work. It need only be said here, that a spurious sentimentalism, a short-sighted where not plainly selfish "philanthropy," and a self-vaunting liberalism (quite unreal), have done more, within a few years, to weaken what can be the only lasting strength of the social and moral well-being of the people, and the only foundations of independence and energy of mind and action, than all the more daring and direct attacks upon our liberties that our past history records. We are told of *Civilization*: too often the honest man must read, instead, *Emasculation*.

The truest tests of Civilization must always be, the means that are open for men to put in use the faculties they are born with; and the habitual putting those means into active exercise. "Neither the bare hand nor the mind left to itself avails much. By tools and helps every work is done. The mind needs these, no less than the hand. And, as tools for the hand either ease or cramp its own motion, so tools for the mind either widen or narrow its own scope."*

It is the most striking characteristic of the Common Law and the Institutions of England, that their tendency is to give the fullest scope for the habitual use of all the faculties. They recognize, more than has been ever elsewhere done, the fundamental truth, that no man lives for himself alone; but that duties of good neighbourhood are owing, actively, and as an habitual part of his life, by every member of the community. And they furnish, at the same time, the means and opportunities of fulfilling those duties in the most efficient manner.

* Bacon, *Novum Organum*, Aph. II.

They claim a work at the hands of every man; and they give the best quality of "tools and helps" to do it with.

Of these means and opportunities, THE PARISH stands, unquestionably, the most important. It is universal throughout the land. "If the verie substance thereof were thoroughly performed, then should the peace of the land be much better maintained than now it is."*

It has grown, however, to be much the fashion, with many who would affect a certain air of conventional superiority, to sneer at Parish Vestries, and to hold what they are pleased to call "Parish squabbles" as beneath them. In so doing, they do but prove themselves to be neither men of sense nor good citizens. They prove themselves practically movers towards a humiliating state of Retrogression, instead of helpers towards one of Progress.†

It is well observed by Lord Bacon, that often "men have despised to be conversant in ordinary and common matters; the judicious direction whereof nevertheless is the wisest doctrine."‡ I am content to rest the claim of the present volume to the thoughtful attention of those who value the real welfare and progress and moral and intellectual elevation of their country, or even their own true self-respect, on the language of the same great writer in another place, where he says: "While there are not a few things which it is absolutely necessary should be done, but which others would, through mere inbred presumptuousness, affect to despise,—these things I will myself avow and steadily follow out."§ The present work follows, in natural succession, others which I have already published in vindication of the *Principles* of which this volume contains the most practical illustrative *applications*.||

* Lambard's Duties of Constables, etc., p. 9.

† See note, after, pp. 5-8.

‡ Advancement of Learning (ed. 1633), p. 235.

§ De Augmentis Scientiarum, lib. vii. cap. 1 (p. 430, ed. 1662). See the original in the motto on the title-page; to which I might add, from the same chapter, "Nimirum quod fastidiant Scriptores versari in rebus vulgatis et plebeiis."

|| See particularly 'Local Self-Government and Centralization: the Characteristics of each; and its Practical Tendencies as affecting social, moral, and political welfare and progress.'—1 vol. 12mo. 1851. A list of some other works, having the same practical bearing, will be found at the end of this Volume.

Among other marks of the extraordinary want of knowledge which often exists as to the nature and functions of *the Parish*, is a notion which many seek,—though from varying and even opposite motives,—to cherish, that it is an ecclesiastical institution. Hence it is craftily urged, that those who would not acknowledge ecclesiastical domination should not take part in parish action. This pretence is equally untrue in itself, and disingenuous in those who foster it. “The Parish,” whether as a mere territorial division or an active Institution, is not ecclesiastical either in origin or in purpose. No real friend of religion will desire to see assent given to any pretensions put forth to that effect. On the other hand, the true friend to the social and moral welfare of his country, will see, at once, that making such pretensions, or, what is the same thing, shunning parish action under the pretext that such pretensions are made, is a dishonest attack on, or abandonment of, the very purpose and practical end of the Institution of the Parish,—the purpose and end to which it has been applied for numberless centuries in England.

It is true that there now exists, in every Parish (with extremely rare exceptions), a place where every man in it is entitled to the free exercise of all the rites of religion. And, however men’s opinions may differ, few will probably deny that such provision, thus open to all, is better than its being left to accident whether there shall be any provision or none; or its being necessary that every man shall be obliged to pay for it. But, by a fine harmony between Christian precept and social practice, the same building where men have, in every Parish, for ages met to worship God, is commonly the same where, as being usually the most convenient and public in the Parish, they have also for ages met to fulfil their duties to their neighbours in all the secular common relations of life.*

It is the Parish which appoints the officers charged with the special duty of maintaining the Highways and drainage in good state and repair, and of preventing or remedying nuisances to the Public Health.

* For facts showing the inconsistency of the pretences put forth (in respect to holding Parish Meetings in the Parish Church) in a late Act for further emasculating the independence of Vestries,—if haply these are so subversive as to “adopt” it,—see ‘Local Self-Government and Centralization,’ p. 238, *note*, and after, Ch. III. Sec. 14. See also “Church House” in Index.

It is the Parish by which the overseers and guardians of the Poor are chosen.

It is the Parish which habitually appoints and controls many other officers and functions connected with the general well-being; and which is, indeed, constitutionally recognized as the territorial division of the country for all purposes of civil government.

It is the Parish to which the powers belong for originating and carrying out measures for public Lighting; for maintaining public Baths; and for various other important and general purposes; and which has the right and the duty to deliberate and determine on all matters affecting the local common good.

The Parish is the actual foundation and chief practical sphere of that Principle and system of Responsibility of each to all, and of Society to each of its members, which forms the basis of the English Constitution, and can be the only solid and permanent basis on which a free state can rest.

It is thus the Parish on which the chief part of the social and public relations of every neighbourhood, not having some other special and equally comprehensive municipal form, depends. He, then, who pretends to sneer at or despise the Parish, instead of thereby showing his own intelligence or superiority, only shows that he is a sneerer at and despiser of the Laws and Institutions of his country; that he disowns the fundamental Law of Christianity; that, heedless of his own duties, he heeds as little the welfare of his neighbours. While clearly showing his own unworthiness of the rights of citizenship, he proves himself alike unconscious of the spirit of religion and morality, and incapable of appreciating the spirit and the practice which alone constitute the characteristics of free institutions and the freeman.*

* This subject has been fully considered and illustrated, in all its bearings, in 'Local Self-Government and Centralization' (1851), where I have demonstrated the social, moral, and political degradation, as well as insecurity, which are the necessary results of the one system, and of all tendencies to it; and the natural and necessary elevation of character, security, and continual progress which the other system ensures. Since the publication of that work, thinking writers of the most opposite opinions have had the truths there connectedly and (I think I may say) scientifically demonstrated forced on their attention by the course of events in Europe. The debasing principle and effects of the system which has produced every evil on the Continent, and which has already made alarming progress in England—by nothing more painfully marked than by the apathy and insen-

The progress of Society in Population, Civilization, Refinement, and consequent social wants, instead of making affairs connected with the Parish less immediately and habitually

sibility to public and local duties above alluded to, which are now everywhere found in England, whether in the Parish, the Borough, the County, or Parliament—are well noted in the following extracts from writers that have commanded universal attention, though too little heed is given to their eloquent warnings.

“Bureaucracies,” says the *Times* (27 May, 1856), “are always expensive things; for, *starting from the principle* that human nature is weak, and *that nobody ought to be trusted*, a great number of persons are necessarily required to carry out this principle of *controlling every one by some one else*.” The “principle” thus stated is the only one which the poverty of statemanship in England of late years has been able to reach at, for application to any real or imagined mischiefs. An all-engrossing functionarism and all-extensive patronage (utterly destructive to the integrity and independence of public men, whether givers or receivers) have been the result; which is continually tending and striving to enlarge itself. Hence the same influential organ of the Press remarks, in a statesmanlike spirit (7 August, 1856), that “the present age already sees too many examples of nations abandoning the love of freedom and bartering the birthright of self-government for the questionable advantage of an energetic centralization; and we are convinced that, from the moment the nations of Europe are infected with this preference of ‘action’ to discussion—of things done by a Government to debates raised by [any deliberative and responsible assembly of free men]—from that moment will be destroyed the strongest bulwarks of national dignity, greatness, and self-reliance. Nothing could be more appalling to all rational lovers of freedom than the universal spectacle of governmental machinery acting with such correctness, celerity, and aptitude as to dispense with the expression of national opinion and the collision of popular discussion.”

Montalembert, in his late work on ‘The Political Future of England,’ has the following striking passage, written in precisely the spirit of the extracts last quoted:—

“This *concourse of all to the common work* is not only the basis of political life, but it is the fundamental basis of all social organization. Labour, struggle, independent and spontaneous activity, are visible everywhere. From this there necessarily results at first sight an appearance of confusion and disorder which strikes with astonishment those who come from countries where everything is arranged, classed, and ticketed according to the rules of that tiresome uniformity and minute solicitude of the public authorities which, while it *saves men trouble by releasing them from all responsibility*, *destroys the principle of self-action*,—*extinguishes zeal and enterprise*,—*enervates the existing race of men*, and *condemns them to, as it were, a perpetual childhood*. Thus they can discover *no other mode of emancipating themselves* from the wardship of a Master than the *throwing themselves into the wildest excesses of anarchy*; and, when they have got into that deplorable state, stunned, bewildered, exhausted, and terrified by that short and violent paroxysm, they become an easy prey to the first adventurer that presents

important, and less needing and capable of practical attention than heretofore, are in themselves but so many proofs of the increased practical importance of the subject, and reasons why

himself, who audaciously puts on their necks the yoke they had just shaken off, to which they tamely submit till the time comes when the demagogy should recover strength and courage to recommence its attack, and then it will find men without energy, without manliness, and as it were asleep in a chronic lethargy" (p. 238).

M. de Tocqueville has, in his recent work 'On the State of Society in France before the Revolution of 1789,' dwelt on the same subject. "Men," says he, describing the effects of the system of Centralization (which he very rightly characterizes, without periphrasis, as *despotism*),—"Men," where this system has superseded that of the habitual practice of self-government, "are but too easily inclined to think of nothing but their private interests ; ever too ready to consider *themselves* only, and to sink into the *narrow precincts of self, in which all public virtue is extinguished*. Despotism, instead of combating this tendency, renders it irresistible, for it *deprives its subjects* of every common passion, of every mutual want, of all necessity of combining together, *of all occasions of acting together*. * * * The desire to be rich at any cost, the love of business, the passion of lucre, the pursuit of comfort and of material pleasures, are therefore in such communities the prevalent passions. They are easily diffused through all classes, they penetrate even to those classes which had hitherto been most free from them ; and would soon enervate and degrade them all, if nothing checked their influence. But it is of the very essence of despotism to favour and extend that influence. These debilitating passions assist its work ; *they divert and engross the imaginations of men away from public affairs*. * * * Freedom [that is, the habitual practice of self-government] alone can withdraw the members of such a community from the isolation in which the very independence of their condition places them, by compelling them to act together. Freedom alone can warm and unite them day by day by the necessity of mutual agreement, of mutual persuasion, and *mutual complaisance in the transaction of their common affairs*. Freedom alone can tear them from the worship of money, and the petty squabbles of their private interests, to remind them and make them feel that they have a country above them and about them. Freedom alone can sometimes *supersede the love of comfort by more energetic and more exalted passions*—can supply ambition with larger objects than the acquisition of riches."—(*Preface*.)

Dr. P. A. Siljestrom (of Sweden) in his valuable work on 'Educational Institutions,' emphatically declares his "conviction that there is but one means by which to escape from the unfortunate position of permanent despotism [in continental Europe]. Nothing but a gradual extension of well-established local liberties, and the gradual development of a sound system of association, can restore the lost equilibrium of the European communities."

The Chevalier Bunsen informs us, that it was insisted on by Niebuhr, and he himself indorses the principle, that "the foundation of political liberty is *municipal self-government*." He says, elsewhere, "There can be no hope of its taking real root in the country, except in a soil prepared by corporative, county, and provincial self-government." "Without that basis," he adds.

it claims the more careful attention and knowledge. They increase the necessity, and at the same time the facility, for watchful action and practical system. It is the inner and habitual life of a people that is of most importance to its well-being as a nation, and to the maintenance of its national as well as individual character, dignity, and independence. The PARISH is with us the Institution through which the inner life of the people is developed, and in which it should be habitually exercised. The subject of the Parish is then not a matter of mere local taxation, a question of how to get rid of troublesome burthens. In the exercise of the functions of this Institution consists the truest *fact* of freedom; and the mode of that exercise, the jealous guardianship of those functions from encroachment, and the conscientious discharge of them, constitute the test of whether free Institutions truly and practically exist and are appreciated, or whether the reality has been or is being lost under vague names and declining forms. The treating such an institution and such functions as things to be avoided, or to be looked down upon as small or vulgar matters, is the sure mark of a declining state of public morality, of an insensibility to what is truly worthy in human life, and of an essential littleness and vulgarity in mind and temper.

Such being the nature and importance of the Institution of

“the legislative power of Parliament itself is either *une mauvaise plaisanterie*, or a mischievous experiment:”—a truth which every recent session of our English Parliament has unhappily exemplified and illustrated, to the gradual undermining of all confidence in and respect for parliamentary action.

Lord J. Russell, before he attained office, called the old “county courts the *cradle of our liberties*” (‘*Essay on English Government*,’ p. 5), as being one of the habitual means of local action, discussion, and responsibility. But none has been more active than himself, when in office, in striving to uproot every constitutional principle and practice of Local action, discussion, and responsibility. Even from the cautious Duke of Wellington was wrung (see Phipps’s *Life of Plumer Ward*) the utterance of the deeply-felt actual conviction,—which is in conformity with every extract and opinion above quoted,—that “While every one is accustomed to rely upon the Government, upon a sort of commutation for what they pay to it, personal energy goes to sleep, and the end is lost. *This supineness and apathy as to public exertion will, in the end, ruin us.*”

The passages thus quoted are more than sufficient to justify the language used in the text. It would be improper to discuss the special subject further in these pages. All the aspects noticed in the above extracts, together with the causes and consequences of them, will be found fully considered and followed out in the work alluded to at the beginning of this note.

the Parish, it is obvious how essential is a generally diffused knowledge of the characteristics and modes of action of that Institution. Striking illustrations of the want of that knowledge every day present themselves ; and this want leads to the most disastrous results. Encroachments hence become frequent, which are of most dangerous consequence. Dissensions hence arise, which hinder neighbourly kindness and social charity ; while progress in works and action of the greatest importance to the general welfare, is thwarted and hindered. A more striking illustration of these *dissensions* cannot be given, than the fact, that the subject of Church Rates has been able to be clothed with the character of a religious contest ; nor of these *hindrances*, than the extraordinary amount of ill-digested legislation which has of late years taken place under the name and pretence of the Public Health ; raising opportunity for every doubt where all was simplicity before, and paralyzing the efforts of earnest men, instead of facilitating them.

As much want of sound knowledge, both of practice and principle, upon this important subject, which involves all that most concerns the inner and habitual life and welfare of the people, unquestionably exists within the walls of Parliament as without. But this fact only makes it the more necessary that careful general attention should be given to it, in order to prevent the mischiefs which empiricism, not the less because clothed with the forms of legislative sanction, always carries in its train.

Sound action on any matter can only spring from taking a well-considered view of every aspect of the facts and circumstances involved. For sound action is but truth put in practice. Such well-considered view can only be taken when those familiar with such facts and circumstances have the habitual opportunity and duty of comparing them, and, after such comparison, of coming to conclusions. The Institution of the Parish affirms the duty, and has it as its end to afford the full opportunity and means, for such comparison, conclusion, and consequent sound action.

Every lover of truth will therefore desire to see the Institution of the Parish maintained, as the most efficient means for the elaboration of the truth in all that concerns our social well-being. The Parish is the truest School that can exist : it is the school of men in the active business of responsible life :—

it is the school for the highest moral training. Men may be educated by book-teaching: their minds may be emasculated by the formalisms and conventionalisms which too often pass current under the names of "education" and of modern "refinement:"—they can only become *men*, and members of a free state, and true "neighbours" one to another, by the practical school which such Institutions as the Parish keep continually open. The true philanthropist and the real statesman will seek to keep these schools in the highest state of continual efficiency. Each of these will seek, not to cramp, but to develop, the activity and scope of these Institutions.

The object of the present work is, then, to enable every man practically to understand the nature, purpose, and working of this Institution of the Parish; that so, what it concerns every Englishman to know and deal with, he may be able to know and deal with rightly.

To make a Book on the Parish really sound and useful, it must not only show facts as they now stand: it must show the bearings of these, explained by reference to both past and future. There is too much tendency, at present, to pin faith on the mere letter of a temporary Act of Parliament. This is one of the most serious mischiefs of our time. It is forgotten that Parishes and our other Local Institutions do not owe their origin to Parliament; but that, quite the reverse, Parliament itself is a *result* derived out of the pre-existing action of these Institutions. Acts of Parliament cannot, then, interpret the constitution and action of Local Institutions. They can but afford occasional illustrations of them. The Common Law of the Land, and the history of the Institutions themselves, are the only substantial guide. Modern attempts at Legislation, and the servile disposition which has latterly been tending to grow up to look no farther than the letter of such legislation, have been the cause of enormous mischiefs. Acts of Parliament are the least part, and certainly the least important part, of the Law of England. No Law is sound and reliable, and no legislation can, therefore, in fact, be really practical, or other than (if no worse) simply delusive and thus mischievous, which is not certain and lasting.* But experimental and ever-shifting legislation is so much the fashion of the day, that a sense

* See 'Practical Proceedings for the Removal of Nuisances, etc.,' 2nd ed. pp. 15–19, where I have dwelt on this topic.

of the looseness and uncertainty of our Institutions is really all that can be got by him who looks no further. It thus becomes more than ever desirable that men should know that there is something permanent and fundamental in our Institutions ;—and should know what this is, and how to distinguish it from what is ephemeral and shifting. This applies nowhere more strongly than in the case of the Parish : an institution which daily concerns all men ; in the action of which each man is bound to take a part ; and the shifting changes of legislation as to which, it is morally impossible for the mass of men to follow.

I shall therefore endeavour to show that the Institution of the Parish rests upon the fundamental Principles of the Constitution—and is, indeed, an essential part of the fabric of the State ; and that, independent of all Acts of Parliament, it lives, and has a very vital being and most important functions, involving the responsibilities of every man. While the solid foundations and expansiveness of the Common Law will be thus shown,—and, incidentally, the importance of maintaining fundamental Principles against the perpetual attacks of charlatan-ism,—the relations will be seen in which the Institution and its various modes of action stand, to many topics and propositions of the day. The goodness of what is permanent proves itself. The mischiefs that have followed, and must follow, from tampering with what is fundamental, can be seen.

I propose to trace, first, the general character of the Institution of the Parish itself ; in doing which I shall show the erroneousness of the extraordinary notion that has latterly been put forth and cherished by some, as to its being an ecclesiastical Institution. I shall then point out what the obligations and powers of the Parish are ; by what means, and through whom, these obligations and powers are severally to be discharged ; the more usual forms and modes of action practically adopted—pointing out the safest and most efficient methods ; and the ways and means raised, and how raised, to support ordinary expenditure and to enable the accomplishment of needed works.

In fulfilling this intention, it will be necessary, in order to make the Book truly practical, because *intelligently* so, to show how the Institution itself, and its various functions, and their modes of discharge, have originated. Thus only will the true characteristics of each be able to be thoroughly understood,

and so worked out in practice. Thus only, especially in a time when all our Institutions seem but the mark for the superficial to aim shafts at, from every varying side, will the man who is in earnest be able to see his path clear, amid conflicting Acts of Parliament and the encroachments and illegal assumptions of all sorts of newly-fledged functionaries, eager for sway.

It will specially be shown that the original and main work and function of the Parish are *secular*. Those who seek to represent these as being ecclesiastical, avoid, indeed, the trouble of investigating the subject. But they are, truly, though without always intending it, enemies both to the religious and civil Institutions of the country. Religion can never be made to command the respect or affection of any one whose respect or affection is worthy, by its professed teachers aiming at domination. When these seek to import their interference, grounded on that character, into secular affairs, they deservedly earn the distrust of every right-thinking and right-feeling man. Thereby religion itself becomes dishonoured and debased. On the other hand, to try to deal with religion, after the manner of some, as an absolute specialty, is not consistent with human nature, with its own essence as a vital reality, nor with the unmistakable claims of a teaching which declares, that, while there is a first and great commandment, there is a second which is like unto it; which second is, the love of our neighbour.

Mere technicalism, though much prized by the narrow-minded, is of very little practical value. A broader ground must be taken to make the Institution of the Parish understood and practically appreciated and taken part in. While, therefore, no technical point of any practical importance will be omitted to be pointed out, with its recognized authority, in the proper place, this Book aims at a higher and wider practical utility than mere technicalism can ever give.* The authorities that will be cited will be the most original ones. These are commonly little referred to; and it is undoubtedly a great saving of labour to omit consulting them, and to be con-

* It will be found that very considerable additions are made to the authorities quoted in this edition. This has been done to give increased facilities to those who desire to verify technical details. At the same time, some important practical points have been more fully dealt with,—as, for example, the so little understood subject of Public Prosecutors (see Chapter VII. Sec. 2).

tent with modern superficial and often mistaken references to the matters they deal with. But no modern judgment or decision can *make* the Law on any point. It can only profess to *state* what the pre-existing Law is. If the original Principles are adhered to, the modern Judgment can only agree with the original enunciations of the Law. On the other hand, if the original Principles of that law have been either unconsidered or unheeded, the modern professed statement of it, by whatever array of judicial authority it may be supported, is unsound, and ought not to be regarded. The only safe and sound course, therefore, in order to true and permanent practical utility, is to take as the guides the most original authorities themselves that can be reached.

Modern times have, unhappily, shown, in many respects, a more servile tendency to bow before the arrogance of ecclesiastical and bureaucratic assumption in England, than has been shown in former ages. The Church itself has been, and is, a great sufferer from this cause, and from the unwarrantable pretensions of its self-asserted, but false, friends. The rights and liberties of the People, however, are hence yet more dangerously threatened. Whether we look at Acts of the Legislature, or at decisions of the Courts of law, there is found, in our time, far less independence of mind and tone, very far less of manly grasp of Principles, and fearless adherence to them and to the Spirit of Protestant professions, than were heretofore shown. A timorous weakness seems, indeed, to paralyze the assertion of Right and Principle, alike against ecclesiastical usurpation and bureaucratic encroachment. An ignoble subserviency of spirit is strikingly exhibited in dealing with each.

It becomes necessary in this work, to state plainly several instances of this. These are stated plainly, but certainly with candour. Those are the only true friends of their country, who resist the growth of such usurpations and encroachments, and who would expose and rebuke the spirit which, whether ignorantly or (as is too often the case) selfishly, quails subserviently before them.

As regards legal decisions, the marvel is rather that, amid their multitude and the necessarily incomplete exhaustion in individual cases of the topics involved, coupled with the unquestionable tendency of modern tone above noticed, the statement of the law in them is not more often unable to command

the assent of the careful inquirer. But whenever such a case occurs, he who would explore and endeavour to explain any branch of the Law—especially a branch like the present, which concerns the inner life and deepest interests of every local neighbourhood—is bound, as an honest man, not to be content with the blind copying of any mere “collection of recollections,” but to try every modern decision by the test of fundamental and pre-established *Principles*; and if these are found to have been either unwittingly overlooked, or in any way departed from, he is bound plainly and unhesitatingly to show it, and to reaffirm those Principles.

As regards the Church, while neither the fact of the ecclesiastical usurpations that have been made and attempted, both in past times and, at least equally, in our own day, nor the enormous social and moral mischiefs that have sprung from them, can be questioned, or scarcely exaggerated, it is certain that it is not the best and worthiest of her ministers who strive for, or approve, these graspings at ecclesiastical domination; but precisely the reverse. In the course of this work, I have received cordial and valuable assistance from known ministers of the Church, who are thoroughly aware of the true value and importance of that which constitutes the Basis of the inner life of the Nation, the sound and practical means for securing its social and moral well-being,—the secular Institution of THE PARISH.

CHAPTER I.

THE PARISH : ITS ORIGIN : CHARACTERISTICS : FUNCTIONS :
DIVISIONS.

AN examination of the most authentic records shows that the Parish is the original secular division of the land; made for the administration of Justice, keeping of the peace, collection of taxes, and the other purposes incidental to civil government and local well-being. There were by no means, originally, churches or priests to every parish. These were things of much later introduction. The Parish, being already in existence and active life, was simply the obvious and natural territorial division to which separate churches were allotted, when the piety of the wealthy led them to build and endow these.

The division of the land into *hundreds* is of very great antiquity. Traces are supposed to be found of the division of the hundreds into integral parts under the name of *tythings*.* In some few records, practical mention is made of "tythings;" and the name of *tythingman* remained long, and even still remains, in use in some places. Elsewhere, the name *headborough*, and elsewhere that of *borsholder*, was and is in use.† We find the term *provost* also often used.‡ They all mean the same thing,—the Head of the men of the neighbourhood. The name of *tything*, however, if ever used territorially, gave way, many

* It seems, however, very doubtful whether such a name was ever in itself territorial. The facts seem to point to the term being used only in reference to the inhabitants. "Tun" (town) is the old name: and each original "tun" had a "tything" of inhabitants. When more populous, it had two or more tythings of inhabitants. This view seems to me the only one consistent with the records; and it explains why, in some *divided* Parishes, the smaller divisions are, even now, sometimes called "tythings" to distinguish them from the whole Parish.

† See after, Chap. IV.

‡ See, as to the meaning of Provost, Chap. IV.

centuries ago, as a practical name, to that of *Town*, *Parish*, or *Vill*; terms commonly used to express the same thing.* From a remote time the integral divisions of the hundreds are not found called, in the records, by the name of *tything*, but by that of *parish*,—or that of *vill* or *town*, unquestionably used to express the same division we now more commonly call *parish*. Very few cases are found in which the word *tything* occurs, even mentioned on the Rolls of Parliament.† There can be no doubt that, either the name *parish* has become substituted for that of *tything* (if the latter was ever used territorially), to express the same division of the land; or the division of the *tything* has given way, for precisely the same purposes, to the one which we now call the *Parish*. Everything points to the former as the correct mode of stating the fact. The careful inquirer can, indeed, come to no other conclusion.‡

The earliest records which we have of the proceedings of Parliament, find *Parishes* treated as the known and established integral subdivisions of the *hundred*. It is decisive on this point that it was through the *Parishes* that, among other things, the public taxes were assessed and collected. The form of procedure is preserved to us, more or less complete, in many different cases. Under date of A.D. 1297 (25th of Edward I.) it is ordained by Parliament, that, in each parish, four men shall be chosen by the Parishioners, who shall return the assessment

* See after, p. 33.

† In a petition from Dorset, the hundred and “*dizeme*” are named: 21 Edw. III., A.D. 1347; petitions on Rolls of Parliament of that year, Number 8. See also, Year Books, 8 Edw. III. fo. 55, where it is “*dozeine*.” See after, p. 20.

‡ It is decisive of the point as to the identity of the *Parish*, as an Institution, with the *Tything* of freemen and their *tythingman*, that the existence of a separate constable is an unquestionable criterion of the separate recognition of a *Parish*. See *Rex v. Horton*, 1 Term Reports, p. 376, and see after, p. 37 note, and Parke, B., in *Elliot v. South Devon Railway Co.*, 17 Law Journal Reports: Exchequer, p. 264. It is not thus implied that every former *tything* is represented by an undivided present *Parish*. (See note on preceding page.) Divisions, as will presently be shown, have from time to time been made: but the criterion, identifying the idea or essence of the *tything* with whatever such divisions have been made, remains the same; thus very strikingly illustrating the point that the original fact and idea of the *Parish* as a whole were inseparable from those of the *tything*. See, in illustration of this, Rolls of Parliament, Hen. VI., at end, “*de annis incertis*,” bundell 2, No. 4:—“Chescun Conestable, Tithyngman, ou chief Plegge, de chescun Ville ou Hamell.”

of the parish to the shire authorities; and, to prevent any wrong being done, it is further required that the authorities of the shire shall afterwards go from hundred to hundred, and from parish to parish, to hear any complaints, and correct any errors in the assessment. A record of nine years later (34 Edw. I. A.D. 1306) is still more precise. It gives a striking picture of the mode in which Local Self-Government was then practically developed and active, and of the constitutional checks by which its sound and healthy action was maintained. It is the more remarkable, as showing that the Representative plan of the parishes, which is found expressly recorded in the summary of Laws compiled in the time of Henry I. (A.D. 1100), was, at this time, in full action. It is declared, that a jury of twelve men from each *hundred* shall deliver to the assessors of each shire their assessment; and that, in order to do this, such jury shall take to itself four men from each *parish* in the hundred, with the provost of each parish, to enable it to make true return as to the parish: which four and the provost shall, in each case, give aid to the hundred jury, upon oath. To do what is needed for this, the hundred jury is to go from parish to parish, and, with the four and the provost of each, there to make true assessment of each parish. The assessors of the shire are, afterwards, to go from hundred to hundred, and from parish to parish, in order to see that no wrong has been done. Simplicity, completeness, and the true practical working of efficient Local Self-Government, under a sound system of Constitutional Checks, are here combined.*

Numberless cases might be quoted from the Rolls of Parliament, illustrative of the same practical method; showing, beyond possibility of question, that the integral part of the hundred has always been the *parish*; that the parish was, centuries ago, thus active; and that it formed the basis of the practical machinery set in motion on the important and entirely secular matter of national taxation. Happily, even the details remain. As if to free the important points involved from the possibility of doubt, the records are to this day extant, in a state almost entire, of the actual assessment and returns made by all the parishes in most of the counties of England, about the year 1340. The names, even, of the committees or juries of most of the hundreds and parishes are contained in this invaluable

* See after, note †, p. 23.

record. By many incidental allusions, as well as its whole direct tenour, this record proves the entire control of all the affairs of every parish to have been then in the hands of the inhabitants of the parish. In conformity with the principle of the Common Law, that "the Parish was made for the ease and benefit of the Parishioners and not of the parson,"* and that they control his secular affairs and not he theirs (which latter is a pretension set up in modern times only), the inhabitants assess and declare the value of the income of the Rector or Vicar (as the case may be) wherever necessary.†

It is remarkable enough, as illustrative of the spirit of independence that then existed, and of the respect which the Law compelled, from the highest to the lowest, that a case occurs in which the assessors of Shires report that no taxes can be got from Stafford and Salop, because, as the inhabitants allege, Magna Charta has been broken.‡ Instead of using the unconstitutional means that later times have resorted to,—of a crown-appointed irresponsible Commission,—inquiry is ordered to be made as to the facts of the breaches thus alleged, "on the oath of honest and law-worth men of those parts."

In further illustration of the purely secular character of *the Parish*, the Records show that a large part of the forces for war were raised by means of the parishes. Every parish is required to furnish one foot-soldier, equipped and armed,§ for sixty days.|| And Parliament is expressly declared to have granted that, in every Parish in the kingdom, the four men and the provost, who have already been named in another relation, shall be answerable for one man-at-arms.¶

It is to be remarked, as carrying on, still further, the illus-

* Lord Chief-Justice Holt, in 3 Salkeld 88.

† See, as to *Inquisitiones Nonarum*, after, pp. 26–28 ; see also Chap. VI. and Chap. VII. Sec. 12.

‡ Rolls of Parliament, temp. Edw. II., Appendix, No. 18.

§ *Ib.*, 9 Edw. II. No. 1.

|| *Ib.*, Appendix, No. 25.

¶ *Ib.*, 4 Edw. III. No. 1. See after, Chap. III. Sec. 3 and Chap. VII. Sec. 12, as to the *arms* which each parish was in the habit, up to a very late period, of finding and keeping always ready for use. An entry some years later (27 Hen. VI. A.D. 1449) supplies a curious key to the population of the kingdom. Proclamation is ordered to be made "in every parisshe" that every thirty men should furnish one horseman ; the whole number raised by which means is computed at 60,000. This would give a population of about nine millions at that time, if the term "men" means adults. If it be taken to mean simply "inhabitants," the population will be about two millions.

tration of this important practical point, that, in the last case named, the provost is called the "provost in Eyre." The term signifies, the one who had to be present at the periodical local criminal courts. Other entries on the Records prove that the parishes had, as above hinted, to be present, either by all their individual inhabitants, or by their representatives, at those valuable periodical local courts called the Sheriffs' Tourns and the courts of the Justices in Eyre, as well as at the hundred courts and the courts of the Coroner*—all which Courts are provided by the Constitution of England in order to give the simple but efficient means for the prosecution, on the behalf of the public, of every wrong-doer.† That is to say, the *parish* is an essential part and parcel of the system for administration of justice, civil and criminal, through the land. And the parishes were always amerced, as parishes, in default of duty fulfilled. The Articles of Inquiry to be made at the above courts, were required to be published and made known to all, avowedly "to the end that the people should have knowledge on all the points, so that they might the better regulate their conduct."‡ Certain officers of the Crown are, elsewhere, prohibited from meddling in any inquiry as to matters which the Law provides shall be inquired of, by the proper Local tribunals, before the Justice in Eyre.§ A Parishioner was, indeed, liable to be amerced by the Eyre Court, if, having been appointed a "Domesman"|| (a term expressing, doubtless, one of the *four* above described), he should refuse to attend the hundred court in that capacity, and there fulfil his duties.¶ A Record of 1332 (6 Edw. III.) gives striking illustration of this function and duty of the Parish. By this, the four men and the Provost of every Parish are bound to come in every case of crime committed; and, when needed, to summon all the other men in the parish with them, to make hue and cry from parish to parish, and from hundred to hun-

* Rolls of Parliament, 8 Edw. III. No. 43.

† See further hereon, Chap. III. Sec. 3, and Chap. VII. Sec. 2.

‡ Rolls of Parliament, 36 Edw. III. No. 24. See further, as to the publication of Statutes, after, p. 29 and *note*.

§ *Ib.*, 50 Edw. III. No. 41.

|| Thus "*Domesday Book*" signifies the return made by the chosen freemen, assembled in their regular Institutions of Local Self-Government. See after, p. 52. The *Leet* is always called "*Leet or Law-Day*."

¶ Rolls of Parliament, 21 and 22 Edw. III., Petitions, No. 40. The Year Books in many places illustrate the same thing.

dred, till the wrong-doer has been taken.* This duty will, in a later page, receive fuller notice.

There are many other records which illustrate at the same time the thoroughly secular character of the Institution of the Parish, and its position as the unquestionable integral part of the Hundred. Without citing a multitude of cases, a few more may be usefully quoted.

The inhabitants of two hundreds in Cornwall petition Parliament in respect to the levy of State taxes within those hundreds. In doing this, they expressly declare that "in those hundreds there are sixty parishes," and that a certain sum was levied from *each parish*. Restoration to each parish of a part of this sum, as having been levied under false pretences, is prayed; and inquiry, by a jury of twelve men of the hundred, is asked.†

In another case, a subsidy is granted by Parliament in the terms "that alle inhabitantz, housholders, withynne every parische of this royaume [realm], so yat yer be inhited in ye saide parische x persons there holdynge housholde," shall pay a certain sum.‡ Here the existence of ten householders, which is commonly stated to be the idea of the tything, is expressly made the test of the liability of the parish to the special tax.§

In the same way, it is the parishes that are required to contribute to the wages of members of Parliament. Provisions are expressly made to secure the due and responsible assessment of the amount needed for such wages, on every hundred within each shire, and on every parish within each hundred.|| And the "Constable, tythingman, or chief pledge,"¶ of every *parish and hamlet*, is elsewhere called upon to see the men of the parish protected against unjust contributions.

In cases of inquisitions taken as to tenancies of knight's fees, held of the Crown, the parish is found named, as it is usually at the present day, as the matter of description,** which description is elsewhere required to be added in all writs.†† The

* Rolls of Parliament, 6 Edw. III. No. 5.

† *Ib.*, 3 Hen. V. (A.D. 1415), No. 4.

‡ 6 Hen. VI. (1427), No. 13. § See before, p. 15 *note*, and p. 16.

|| Rolls of Parliament, 8 Hen. VI. (1429), No. 15; 23 Hen. VI. (1444), No. 15.

¶ *Ib.*, 20 Hen. VI.

** *Ib.*, 21 Edw. I. No. 7.

†† *Ib.*, 1 Rich. II. No. 40, and see Statute 1 Hen. V. cap. 5. See further, after, p. 36 and *note* ‡ thereto.

remarkable words occur in the former case, that, the inquiry having been made by the oath of good and law-worth* men of the neighbourhood, more faith is to be given thereto than to the bare word of one man. It is unfortunate, for truth and justice sake, that this sentiment does not prevail in our time.

These few illustrations are enough, out of the great mass that might be quoted, to demonstrate the fact that *the parish* is a secular Institution; the true and original civil subdivision and integral part of the *hundred*; and, for centuries back, applied, in that character, to all secular purposes. If the same division was once called “tything,” it has certainly been called “vill” or “parish” for many centuries. In subsidies granted more than five centuries ago, the rate or assessment for each “parochie” is stated, and “parisshe” has been seen to have been elsewhere occasionally used.† But the more common term before and at that time in use was the Latin form “Villa,” though the inhabitants seem to have been generally called “Parishioners.” The word “villa” in Latin, “ville” in old Norman Law French, translated indifferently “town” and “Parish” (which last are merely convertible terms) is the *Parish* of our time. Without entering here on further proof or illustration of this point, it is enough now to quote the language of Fortescue, which is clear and conclusive on the matter. “Counties,” says he, “are divided into *Hundreds*, which in some places are called Wapentakes. *Hundreds* are divided into Parishes [Villas], under which name are included Boroughs and cities.‡ *For the bounds of Parishes* [villarum] *are not limited by walls, by buildings, or by streets*; but include extensive fields, large territories, even Hamlets,—as well as other parts, such as waters, woods, and wastes, which it is useless to specify by names. For in England there is scarcely any place which is not included within the circuit of some parish; though there are certain privileged places within some parishes which are not deemed to

* See, for the meaning of “law-worth,” my ‘Government by Commissions,’ etc., p. 329.

† See the instances given before. Also, Rolls of Parliament, 45 Edw. III. Nos. 6 and 10, and *Ib.*, 48 Edw. III. Appendix No. 135. Throughout the *Inquisitiones Nonarum* “Parochia” is used indifferently with “Villa.”

‡ So Littleton: “Every borough is a town (chescun burgh est un *ville*) but not e converso.”—Of Tenures, lib. ii. cap. 10, § 171. On this Coke well remarks that “a towne [parish] is the *genus*, and a borough is the *species*.”

be part of such parishes:" that is, in modern language, they are "extraparochial."*

The actual position, then, of the *Parish* among the Institutions of the country is, the active means of carrying on and carrying out the secular needs and business of the neighbourhood, both within itself and in its relations to the State. While the Institutions of the Sheriff's Tourn and the Court Leet provided (until the unfortunate introduction of innovations far less rational and less practical) the periodical local courts of *criminal* administration; those of the County Courts and the Hundred Courts (and in some points the Courts Baron), the courts of *civil* administration;† the Parish, immediately connected with all of these, has always been the Institution of permanent action, for the discussion on and doing of all those things that the common local welfare needs. The two former were for suits and trials; the latter for ordinary Local deliberation and Self-Government. These three sets of Institutions have, indeed, constant and important mutual relations. So long as the Sheriff's Tourn, and the Court of the Justices in Eyre,—wider in scope even than the Sheriff's Tourn,—were active to enforce the fulfilment, by punishment of the neglect, of all the duties of the Parish, those duties were well per-

* Fortescue, *De Laudibus Legum Angliæ*, cap. 24. This point is capable of very full illustration; but enough has been said already to satisfy the candid inquirer. The point is not, it must be particularly remarked, one of curious inquiry only. It is one of very direct and practical importance and application; and it affords a good illustration of what has been already said (Introduction, pp.10-12) that the true practical understanding and use of their Institutions by freemen requires that the origin and history of those Institutions should be well understood. Cases have, since 1855, happened within my own experience, where the benefit and proper application of large Parish Charities and foundations have been actually endangered, through the misapprehension of those who were bound to have been better informed on the above subject, but who have not understood the use and sense of the word "Town." See further, after, p. 33.

† "As the Leet was derived out of the Tourn for the ease of the people, so this Court of the Hundred, for the same cause, was derived out of the Court of the County."—Coke, 4th Institute, p. 267. It must be remembered that the "County Court" really is the Court of the people of the shire, administering justice among themselves. The phrase has been craftily borrowed, in our day, and applied to a totally different thing,—namely, a new and unconstitutional machinery of functionarism and *Summary Jurisdiction*; which cannot remain long before its unsatisfactory nature and working are generally found out and felt, as has already been the case in numerous instances. See hereon 'Local Self-Government and Centralization,' pp. 280, 318.

formed.* It is this practical enforcing, by such Constitutional means, of the doing of duties, that is needed now, and can alone be useful. An intermeddling dictation as to the way in which particular matters shall be done, in order to square with the preconceived notions or pedantic systems of central Boards and functionaries, can only restrain and prevent, instead of stimulating, local effort and intelligence.

The articles themselves that were the ordinary matters of Inquiry at the Courts Leet, Sheriffs' Tourns, and Courts of the Justices in Eyre, suffice to indicate, for present purposes, the things that the parish had to care for. Among these were the maintaining of all common rights, ways, watercourses, etc., clear of disturbance or encroachment; making, and keeping in vigorous activity, proper provision for watch and ward; and all such other matters as concern the Common Welfare. It was the business of these occasional, but periodical and certain, Courts, to see that no mischief had arisen by neglects or defaults.† It was, as it still is, the business of the parish to be continually active to do the things themselves.

In treating, hereafter, of Committees of Parishes, it will be further shown that a multitude of matters have been specially given in charge, from the earliest times, as occasion has arisen, to the Parishes to carry out,—as being the Local Institutions of secular action existing over the whole land.

The secular character and purpose of *the Parish* being thus clear, it will be useful shortly to show how the ecclesiastical connection with parishes took place; and how the attempt has hence been unrighteously put forth to make the actual secular character of *the Parish* yield to ecclesiastical encroachments. Ecclesiastical authorities are very anxious to make it appear that parishes took their rise from ecclesiastical arrangements.

* It may be remarked here that formerly, when a fresh adaptation was suggested,—as, for instance, in the management of Highways,—while the whole arrangements made had reference to the Parish, it is expressly declared that penalties incurred are to be levied and used *as in Leets*; that the Leets are to inquire and amerce; while the sums recovered are to be for the use of the Parish. See 2 and 3 Philip and Mary, cap. 8; 18 Eliz. cap. 10; etc.

† These courts are still bound, by Law, to be held; and would, if kept in action, be of far greater efficiency than any of those experimental devices that distinguish our time, under the names of Boards, Commissions, Law Reform, etc. etc.; all of which are merely excuses, and are made into multiform specious devices, for extending functionarism,—and are not means nor adaptations for promoting the public welfare.

It is only by shutting their own eyes, and carefully seeking to shut those of others, to the facts, that the least show of ground for this assumption can be set up. The facts are entirely against it; and these facts are found incidentally admitted and reinforced by the most authoritative writers among even ecclesiastics themselves.

The truth-seeker will find that, in the old Anglo-Saxon Laws and books, terms occur, applied to ecclesiastical persons and duties, which themselves prove that the priests became, by degrees only, attached to the existing divisions of the land; which latter were very naturally *adopted* for ecclesiastical purposes, though unquestionably not originally erected for the sake of those purposes. Thus the term "shrift-shire"* is used, not "parish," to express the range within which the priest fulfils his duties. Late translators have, indeed, but in the teeth of the plain meaning, given this word the form "parochia" (parish). Bede, again, has a term which King Alfred renders "mynster-shire."† This also has been translated "parish,"‡ not only without the shadow of warrant, but in defiance of the plain actual meaning. In neither of these cases had the reference anything to do with the present and even then-existing Parish divisions. The very same authorities, indeed, prove that *parish* priests did not then exist. Thus Bede, in various places, expressly refers to the existing secular divisions, as above illustrated; and in some cases records, and in others asks, the establishment of churches therein. In his History, for example, he tells of wealthy men who built churches in their "Vill,"§—translated by Alfred "tun" (town),—the common name by which Parishes long went. In his letter to Egbert, again, he complains that there were then many places where the word of

* Wilkins's A. S. Laws, p. 83, secs. 6, 9, 15 : Thorpe, *ib.* vol. ii. pp. 245, 246.

† Hist. Eccles. lib. 5, chap. xix., which compare with (*e. g.*) lib. 3, chap. xix. ; and see King Alfred's translation of the passages.

‡ Bosworth's A. S. Dictionary, p. 245 ; and see "preost-shire," *ib.* p. 278. This translation is absolutely absurd, Bede's own original term not being "Parochia" but "Monasterium." But these cases afford an instructive illustration of the untruthfulness of the means by which ecclesiastical encroachment manages to mislead the shallow and unwary.

§ Book 5, c. iv., Smith's edition, p. 185, for Latin "Villa;" p. 617, for A. S. "Tun." It is only very recently that the name "town" has become appropriated to only groups of closely-built dwellings. See after, p. 33, and Chap. VII. Sec. 12, on *Parish Records*.

God was preached not more than once a year; and beseeches him to take helps, by ordaining priests who should remain in such places, and administer the rites of religion there. And presently after, enforcing the same wish, he declares that there are “many parishes and hamlets (*villæ et viculi*) of the land where no priest is ever seen.”* The Canons and Constitutions made and passed at the Council of Cloveshoe (A.D. 747), with peculiar care and unusual solemnity of sanction, put this highly important point of fact with remarkable precision and clearness. While they confirm the authorities already quoted, they would, standing alone, be conclusive. The ninth of these Canons and Constitutions ordains that, “the Priests shall take care to fulfil the offices of baptism, teaching, and visiting, *in such places and divisions now existing for secular purposes* as may be assigned to them by the Bishop of the province.”† Thus, in accordance with the idea of Bede, the pre-existing secular divisions of the land were avowedly taken as the districts to which the churches were adapted. And one of the highest-esteemed authorities in ecclesiastical Law and Literature tells us,—quoting many canonical authorities for the statement,—that “the form of establishing a parish, according to the rules of the Canon Law, is, that some precinct or place, *limited with certain boundaries within which the people dwell*, should be allotted to some certain church.”‡ Kennett himself, a devoted advocate of ecclesiastical authority, admits the limits of Parishes to have been of lay origin.§ Blackstone, though he does not appear to have consulted the above authorities, states it as “pretty clear and certain, that the boundaries of parishes were originally ascertained by those of a manor or manors.”|| Domesday Book indeed affords proof that whatever profits there might be assigned for the support of churches, were estimated as a subsidiary *part* in the valuation of the secular divisions in which the churches stood.¶

* Epist. Bædæ ad Ecgbert, Smith's edition, pp. 306, 307.

† Spelman's Concilia, p. 248. The expression in the original, though incapable of a literal translation, has at least the full force of the above. The words are “*per loca et regiones laicorum*.”

‡ Aycliffe's Parergon, p. 407.

§ Parochial Antiquities, pp. 586, 587.

|| 1 Comm. p. 114. See after, Chap. VII. Sec. 13, on the relation of Manors to Parishes.

¶ See, for instance, Domesday Book, vol. ii. fol. 265 a, the last line. See before, p. 18, as to this point as illustrated by the *Inquisitiones Nonarum*.

Ecclesiastics appear, however, to have no sooner got established in parishes, than they endeavoured to make their authority paramount there. But such attempts were never submitted to in former times in England. And, although they have been more successful, in many respects, since the "Reformation,"* the secular character and functions of *the Parish* yet remain as unquestionable as ever. It only needs that the true nature of the Institution shall be better and more generally understood, for these to become as universally and valuably active and efficient as ever.

It must be here remarked that the attempt to attach a saint's name to parishes, has been a late ecclesiastical innovation, introduced with the aim of helping the unsecularization of the Institution. It has latterly become common (though highly improper) to describe parishes by the addition of the saint's name to whom the church in the Parish happens to be dedicated. This is entirely incorrect. It is, indeed, curious that, in many places, the saint to whom the church was dedicated is, and has long been, quite unknown.† Some indeed never were dedicated at all. It is unnecessary to dwell on this point, it being absolutely conclusive as to it that, neither in the "*taxation of Pope Nicholas*," nor the "*Inquisitiones Nonarum*,"—both of them being the express and formal records of Parishes, the one made for ecclesiastical purposes, the other for purely secular purposes, more than five hundred years ago,—are the parishes distinguished by saints' names, except in those few and plainly exceptional cases which only serve the more clearly

* The philosophy of this is very simple. When *dissent* was a thing unknown, and the whole feeling was—*self-respect and independence against the encroachments of a foreign church*, all joined to resist priestly arrogance. Since the Reformation, a foreign church has ceased to have influence. Domestic sects have arisen. Hence the old *patriotic* feeling has ceased to enter into the question. Each sect seeks, naturally, to exalt itself; and, as to the Established Church, the support or opposition to its pretensions is made always a home party question. It is unquestionable that the result, on the public liberties, has been very injurious. Ecclesiastical encroachments have been gradually extending ever since the Reformation. No man was more alive to the tendency of such encroachments than Lord Clarendon. See illustrative quotations in Chapter VI. Such is always the mixture of evil with good. Happily, it only needs that the nature of the evil shall be thoroughly understood, for it to be even yet remedied. But a vast deal has to be done in order to *recover lost ground*.

† Kennett's *Parochial Antiquities*, p. 609; Spelman's *Glossary*: *Feria*.

to prove the rule. The description is simply, the *Hundred*, and the *Parish*. Where the church is named, it is called the church of such and such a parish (using the secular name),—not the church of St. Peter or John, or any other, compounded with the true name of the Parish.*

The assessment just named, as “the taxation of Pope Nicholas,” was made A.D. 1290, to ascertain the value of the tythes then paid to the different churches throughout England. It was carefully made; the first-fruits and tenths out of the value of the Benefices, otherwise claimed by the Pope, having been granted by him to the King, to enable him to carry on the Holy Wars. This assessment was, for long afterwards, used as a convenient datum, or basis, for the assessment of the secular taxes voted by Parliament, which were taken on the same class of property. It is clear that the annual value of a *tenth* being ascertained (as it was professed to be by “Pope Nicholas’s Taxation”), the assessment of the annual value of a ninth, or a fifteenth, derived from the same sources, was a simple opera-

* A few places have become known, in modern times, by a Saint’s name only. This is readily explained. In the case of many Metropolitan Parishes, they were only erected into Parishes by the Act of Anne which will be presently noticed (after, p. 39). In other instances, places originally waste and uninhabited, have, long since the introduction of Christianity, attracted a population and a church. The name of the Saint to whom the church was dedicated has hence been adopted in later times to designate the place. In other cases, an older name has become merged, or sunk into secondary rank only, in consequence of that part of the original parish near to where the church was built having long become of more importance than the remainder of the Parish; and thus, for the sake of clearness, the former part was distinguished from the rest by the constant use of the name of the Church. The Parish of St. Pancras (Middlesex), now one of the most important of the Metropolitan Parishes, seems to afford a curious illustration of this. I conceive that a church was very early built on that part of the old Parish nearest to the City of London, round which church an inhabited neighbourhood grew up, the other part of the Parish long remaining uninhabited. “Saint Pancras” is named (but not as a Parish) in Domesday Book (fo. 128 a). But, in the *Inquisitiones Nonarum*, while no such Parish as Saint Pancras is named, the Parish of *Kentishtown* is expressly named—both the terms “parochia” and “villa” being used in regard to it,—while *St. Pancras* is not so much as even mentioned, which it could not have failed to have been had it then been considered as an actual Parish. It is worth notice, in confirmation of the above, that the attempt, made at a very much later period, to set up Kentishtown and St. Pancras as being separate Villages, was defeated. See this case noticed, under the name of *R. v. Middlesex*, in 1 Term Reports 375; 3 Burrow’s Reports, 1613; Bott, No. 51; but reported at length in Sayer, 148.

tion. The other assessment above named, called "*Inquisitiones Nonarum*," was made (A.D. 1340) on this datum. But laymen only made this assessment; as has been already stated to have been always the case. In their returns they show how far, and why, the datum or basis just stated to be used is not applicable, under the then present special circumstances of each several parish; and by these returns the assessment was bound. The statements thus made render this Record of unusual interest and value. The "taxation of Pope Nicholas," and this use of the results thereof as the basis of assessment in other cases, thus prove the very reverse of the admission of any ecclesiastical character or influence as pertaining to the Institution of *the Parish*.

The older Statutes and Rolls of Parliament, moreover, prove that the purposes of the endowments which were afterwards unrighteously monopolized to purely ecclesiastical uses, or diverted to the still worse form of irresponsible *appropriations* under an ecclesiastical cover, were much more comprehensive and beneficial than the selfishness of those who sought self-aggrandisement under holy pretences, would make them seem, at first sight, to have been. They were "charitable trusts" in the fullest sense of the term. The Saxon Laws and the Venerable Bede both show that it was desired there should be schoolmasters everywhere; that is, those who should teach as well the truth of the Faith, as how evil actions might be avoided and good pursued.* The Statute of Carlisle (35 Edw. I. A.D. 1306) sets forth loud complaints as to the abuses of church endowments. These are declared to have been made, originally, "to the intent that clerks and laymen might be admitted in religious houses; and *that sick and feeble men might be maintained; and hospitality, almsgiving, and other charitable deeds, be done.*" In short, these endowments were intended to fulfil all the needs of modern Poor Law establishments and taxation, and of public hospitals, as well as of religious teaching. This Statute goes on to state, in the plainest terms, that the churchmen were seeking to oppress the people and abuse the endowments; whereby "the service of God is diminished,—alms are not given to the Poor, sick, and feeble,—the healths of the living and the souls of the dead are miserably defrauded,—and hospitality, almsgiving, and other godly deeds do cease: and so

* Wilkin's A. S. Laws, pp. 186, 187; Bede, Smith's ed. p. 307.

that which, in times past, was charitably given to godly uses, and to the increase of the service of God, is now converted to an evil end; by permission whereof there groweth great scandal to the people.” The reform of all this was then sought, and, what is more remarkable, obtained. And the Statute enjoining it is expressly ordered to be openly read, by the Sheriff of each Shire, in two Shire courts before the assembled people.*

Again, in the 25th year of Edw. III. (A.D. 1350), a similar record is found on the Statute Rolls. It is here also stated that “the Holy Church of England was founded to inform [the founders] and the people of the Law of God, *and to make hospitalities, alms, and other works of charity*;—and certain possessions, which do extend to a great value, were assigned by the said founders to the prelates and other people of the Holy Church of the said Realm, *to sustain the same charge*.” But it repeats that abuses had grown up; and then proceeds, in very remarkable language, to declare that “the Law of the Realm is such, that, upon the mischiefs and damages which happen to his Realm, the King ought, and *is bound by his oath*, with the accord of his people in his parliament, thereof to make remedy and Law.” And remedy was accordingly made of this great mischief.†

It is elsewhere recorded that, so completely had selfish aggrandisement become the aim of many ecclesiastics, that all the original objects (again enumerated) of the endowment of

* See before, p. 19. “Of ancient time, when any Acts of Parliament were made, *to the end the same might be published and understood*, the Acts of Parliament were engrossed into parchment; and bundled up together with a writ in the King’s name, under the great seal, to the Sheriff of every County, to command the Sheriff to proclaim the said Statutes within his bailiwick, as well within liberties as without.”—Coke, 3 Inst. 41. “*To the intent that no man shall excuse himself by ignorance*, every Sheriff of England shall be bound from henceforth, in his own person, to make proclamation of the Statute four times every year, in every *hundred* of his bailiwick, and by his bailiffs in every market-town.” See Statute quoted in ‘Local Self-Government and Centralization,’ which also see, pp. 135–139, for fuller details on this important practical matter. In modern times, many Laws are made, and there is much *talk* of Law Reform; but no means whatever are taken to make either old or new Statutes known. Functionarism finds its account in this, and carefully maintains the “*mauvaise plaisanterie*” (see before, p. 8, note). Instances will be noticed in Ch. VII. Sec. 1.

† See also the 13 Rich. II. Stat. 2. cap. 2. Particular attention deserves to be here given to the terms of the “*Injunctions*” of Edward VI. and Queen Elizabeth, quoted after, pp. 94, 95, *note*.

churches had become defeated. "Men cease to send their children to school;" "the Parishioners perish in body and soul;" and "Holy Church," it is well and plainly added, "suffers more from such bad Christians *than from all the Jews and Saracens in the world.*"*

Many more such illustrations might be cited. I will only add one from the 15 Richard II. (A.D. 1391). By an Act of this year it was required that, "because divers damages and hindrances oftentimes have happened, and daily do happen, to the parishioners of divers places, by the appropriation of Benefices of the same places,"—a definite and proportionate "sum of money shall be paid and distributed yearly, of the fruits and profits of the same churches, by those that shall have the said churches in proper use, and by their Successors, to the *poor parishioners* of the said churches, in aid of their lives and sustenance, for ever; and also that the Vicar be well and sufficiently endowed." This Statute has now become a dead letter in England; but it is important to know how our fathers dealt with these things.†

It is thus plain that the maintenance of the poor out of these

* Rolls of Parliament, 50 Edw. III. No. 44.

† This Statute has not only become a dead letter, but the evil has extended further, though in the same direction. Rectors and Vicars too often enjoy the revenues of their cures, and let the work be done by curates to whom they pay pittances insufficient for the creditable maintenance of life. This evil has reached so great a height that, a few years ago, it was attempted to meet it by enactment;—which itself, however, remains, like the above, a practical dead letter, and only marked that it may be evaded. The words of this Act are as follow:—"That in every case in which any spiritual person shall have been, since the 20th day of July, 1813, or shall hereafter be instituted, inducted, nominated, or appointed to, or otherwise become incumbent of, any benefice, and shall not duly reside thereon, the bishop shall appoint for the curate licensed under the provisions of this Act to serve such benefice, such stipend as is hereinafter next mentioned, that is to say:—such stipend shall in no case be less than £80 per annum, or than the annual value of the benefice, if such value shall not amount to £80; nor less than £100 per annum, or than the whole value, if such value shall not amount to £100 in any parish or place where the population shall amount to three hundred persons; nor less than £120 per annum, or than the whole value, if such value shall not amount to £120, in any parish or place where the population shall amount to five hundred persons; nor less than £135 per annum, or than the whole value, if such value shall not amount to £135, in any parish or place where the population shall amount to seven hundred and fifty persons; nor less than £150 per annum, or than the whole value, if such value shall not amount to £150, in any parish or place where the population shall amount to a thousand persons." 1 & 2 Vict. cap. 106, § 85.

funds, was a primary object, always insisted upon ; and that the diversion to exclusive ecclesiastical uses—and, still worse, to lay impropriations,—is a gross and dishonest violation of the express object and trust of the endowments of the Church. Before the Reformation, such remedies of these abuses as have been quoted above were often applied. After the Reformation, the appropriations of Benefices were given into the hands of the King by Parliament, under delusive and unredeemed pledges ;* and were given by him to favoured laymen. Hence “lay impropriations” have grown up : and the matter has thus become far more delicate and difficult to deal with than it ever was when a foreign Bishop claimed supremacy.†

Every parish in the land has thus become burthened with heavy poor's rates, (latterly made the excuse for setting up a wide branch of fresh government patronage and of crippling Functionarism,) to meet those purposes which the endowments were expressly given to meet ; and encroachments, in very various forms, are, even now, being continually, and with continually broader strides, attempted in the ecclesiastical direction. It need be only further stated here that it was the object of Archbishop Laud to make the clergy the instruments of political rule through all the Parishes in England. In his famous Canons (A.D. 1640) he bound down “every parson, vicar, curate, or preacher,” to teach and preach that the maintaining of “any independent co-active power, either papal or *popular*,” is treason ; and that “tribute, custom, aid, and subsidy, and all manner of necessary support and supply, be respectively *due to Kings* from their subjects, by the Law of God, Nature, and Nations !” All priests and ministers are therein prohibited “that they presume not to speak of his majesty's power in any other way than in this Canon is expressed.” Certain special presentations are ordered to be made by churchwardens ; and certain books to be provided at the charge of the Parish.

* See Coke, 4th Institute, p. 44.

† “They are called *impropriations*,” says Sir H. Spelman, “for they are *improperly* in the hands of laymen.” (Of Tythes, ch. 29.) It is to be feared this etymology is too morally just to be verbally right. The same writer may be quoted as an authority that the language above used is less strong than might have been justly applied. He begins his chapter on Appropriations and Impropriations in these words :—“Many things are notoriously wicked in conclusion, whose beginnings are not suspected : so hath it happened in Appropriations.”

These Canons received precisely the same sanction and authority that the Canons now in ordinary use have. As to the authority of the latter Canons, a more convenient opportunity of considering it will hereafter occur. It fortunately happened that, men having then the dread of Rome and her Pope immediately before them, Land's Canons and attempts at ecclesiastical encroachment were promptly met as they deserved. A resolution was passed by the House of Commons, that these Canons "do contain in them matters contrary to the fundamental Laws and Statutes of the Realm, to the Rights of Parliament, to the Property and Liberty of the subjects, and matters tending to sedition, and of dangerous consequence." It is highly instructive to mark the grounds taken by the principal speakers in the debates on these Canons. They show the immediate importance of this branch of the subject in relation to the independence and action of *the Parish*.

After pointing out, that the election of a Synod,—which alone could be a lawful Body to make Canons,—“ought to be both by the clergy and the laity,” as “the universal church cannot be represented if the laity be excluded,” Sir Edward Dering brings the matter home. “I may be a Churchwarden,” says he: “then must I [if these Canons are to stand] present upon their yet unborn articles.” Nathaniel Fiennes indignantly protests against that part of these Canons which, as has been just seen, prohibits any parson or other from speaking anything else than therein is expressed: “by which means,” he admirably says, “having seized upon all the Conduits whereby knowledge is conveyed to the people, how easy would it be for them to undermine the king's prerogative, or to suppress the subjects' liberty, or both.”* And the same speaker was clear-sighted and statesmanlike enough to see, that pretensions put forth as to small things often involve broad constitutional *principles* of the highest importance and widest application; and that they ought, therefore, always at once to be resisted. His remarks will find more than one application in the following pages. He denounces, as specially illegal, the clause “wherein they take

* Rushworth's Historical Collections, vol. iv. p. 105. It is interesting to compare with this, the complaints made five centuries ago, three centuries before this speech, as to how the grasping selfishness of the Pope and his ecclesiastics prevented the parishioners being instructed. See Rolls of Parl. 20 Edw. III. No. 21, and places quoted before, pp. 28–30.

upon them, without Parliament, to lay a charge upon the people ; enjoining two books to be bought at the charge of the parish : for, *by the same right that they may lay a penny on the parish without a parliament*, they may lay a pound or any greater sum.”*

Having thus shown that the Parish was secular in its origin and purposes ; and that ecclesiastical arrangements were simply *adapted to it*, as an incidental addition ; it remains to consider what divisions the original Parishes have undergone, affecting their secular affairs.

Many parishes have been divided, from a remote period, into *Townships*,—that is “*small towns*,”—the addition to the word being merely a diminutive. Other names in use for such divisions are those of *tything*, *hamlet*, *vic*, etc. Each of these divisions has become an integral but self-existent part of the original Parish,—a “*villa*” by itself.†

It has been already seen that the word “Town” has only latterly borne the special meaning of a number of grouped houses. Its old meaning was simply what we now call *Parish*, or one of the integral self-existent parts of an original Parish, as last named. In country church-yards, in parishes where there has never been any “town,” in the modern sense, inscriptions will be found, both of old and recent date, naming the parish, township, or otherwise, as the “town.”‡ The word is an old Anglo-Saxon one. It is translated “*villa*” in the Latin records, and “*villie*” in the Norman French. Though the name “parish” has now, except in case of large groupings of houses, superseded that of “town,” the diminutive form “township” is still retained for the subdivisions of the old “town” or “parish.” A Latin translation of the word is occasionally found, which, as in the English, is a mere diminutive—“*vil-lula*” or “*vicula*.” The word “ham” was used, in some places, instead of “town ;” a dialectic variety merely, with essentially the same meaning. Hence, while some places have the ending “tun” or “ton,” others have the ending “ham.” The subdi-

* See after, p. 50.

† See before, p. 21 and *note*.

‡ See before, p. 21, and after, Chap. VII. Sec. 12, on “Parish Records.” The definition of the word “town” attempted in *Elliot v. South Devon Railway Co.* (17 Law Jl. Exch. 262), has no bearing on the above. It was expressly stated to be special only in that case, in reference to the obvious intention of a late Act of Parliament, 8 & 9 Vict. c. 20, § 11. That case is thus, in fact, a confirmation of the above. See the language of Parke, B.

vision of the last is expressed, in the same way, by the diminutive form, "hamlet."

The original Parishes of some of the northern counties are usually very large, the population having originally been very thin there.* The division into "townships" is therefore exceedingly common in those counties. In the midland counties the division into "hamlets" is better known. In the western counties "tythings" are found.† These subdivisions have usually full separate action, different sets of officers, and in other respects are independent of one another, and, for most purposes, practically separate Parishes. It must be clearly understood that what applies to *the Parish* in this Book applies equally, therefore, both in Practice and in Law, to these subdivisions of it. Special customs exist in many places, retaining the traces of the original unity of the Parish. Some of these will be hereafter noticed. They are chiefly found where (as is sometimes the case) only one common church exists for the whole of the original Parish; and so only one convenient place of meeting for the discharge of secular business. For it must be noted, that, though in many, yet by no means in all cases, is there a separate church in each of these divisions.

These divisions grew up as the needs and convenience of the inhabitants made them feel the necessity for them. That necessity being felt and acted on, the divisions became immediately recognized by the law of the land. It is a Principle which Institutions of Local Self-Government carry inherently within them,—to have the power of adapting themselves thus to the course of events and the progress of population and its growing wants.‡

* See before, pp. 15, *note*, and 21.

† See before, p. 15, *note*. An old case in the Year Books (4 Edw. IV. 39) states that, even then, there were some Parishes in Cornwall which had so far prospered as to have become divided into as many as twelve and fifteen parts,—each treated as a "ville" by itself.

‡ The "wards" named in Statute 7 & 8 Vict. c. 101, sec. 19, must not be confounded with these divisions. The term "ward" is used in that and several other late Acts (*e. g.* Metropolis Local Management Act), in a totally different sense from its original and true one. Instead of suggesting real divisions of Parishes, for the better carrying out of Local Self-Government, these Acts merely suggest empirical devices to be put in formal but lifeless action, and this by functionaries—not by the Parishioners. They are, in fact, simply devices for facilitating functionary purposes, and *preventing* anything like real self-government, such as the action of a true "ward" or of

The Statute of Exeter, 14 Edw. I. (A.D. 1286) is an instructive illustration of the entire recognition, by the Law, of these and other subdivisions of Parishes. That Statute is of great interest in many respects. It gives a complete view, in another relation than those already quoted, of the remarkable and efficient system of checks and securities which prevailed in order to ensure the fulfilment by every local district, and by every public officer, of the functions and responsibilities of each, and to secure the due administration of Justice and the Prosecution of all wrong-doers. Its special purpose was to secure, by regular inquiries, the fulfilment of their duties by coroners. For the present purpose it is sufficient to say that it is entirely based upon the fact, that *the Parish* is the integral subdivision of the Hundred. But it further recognizes the actual subdivisions of the Parish as being, each, a distinct and responsible institution of Local Self-Government. The "Bailiffs or Bedells" within every Hundred are required to return "the names of all the *parishes, townships, and hamlets* [les viles, demie viles, e hamelez] within the Hundred. And there are to

the open Vestry (or elective representative Vestry) ensured in every ancient city and parish. See as to the Act 7 & 8 Vict. c. 101, § 19, after, Chap. III. Sec. 7. As to Wards, and their true meaning and purpose, see my note in edition of the Metropolis Local Management Act, 1855, pp. 51-53, *note*.

It would not be right to pass this subject without remarking the great need which does actually now exist for the application of the principle and practice which formerly prevailed as to the division of Parishes. Though, as will presently be seen, some parishes near London were divided a century and a half ago, whence has resulted their good management now, others, which have since grown into importance, remain undivided and unwieldy. St. Pancras, St. Marylebone, Paddington, etc., are examples of this. There are many similar examples in different parts of the country. True Local Self-Government cannot work with right efficiency when the Parish becomes thus unwieldy. Formerly, such Parishes would have become divided into Townships or Wards, thus ensuring an *actual knowledge*, by *every part*, of the responsibilities that exist. It is the present want of this, whence, and not from any fault of Local self-government, have occasionally arisen, in some of the places to which these remarks apply, painful and discreditable circumstances. This want is a necessary result of the neglect to apply the constitutional and simple, but thoroughly practical and efficient, remedy. It has already been remarked (before, p. 6-8), that the growth of population is no argument against Parish Action. On the contrary, it is an imperative reason for its more careful application. What it makes necessary is simply *adaptation*. The true Ward system is the efficient adaptation in crowded towns. Not to be misunderstood, I beg particular attention to the observations on this subject in the full *note* above referred to.

be sent, from every Parish eight men, from every township six men, and from every hamlet four men, (the lords [chief proprietors] of such parishes, townships, and hamlets, not being of the number,*) by whom the inquiry shall be made." This must be returned by them to the jury of twelve taken from each Hundred, as an integral part of the Shire.† Every populous town (there called a "town answering by twelve") is treated as on a par with a Hundred. It is expressly added that, if the aforesaid parishes, townships, and hamlets have not, in any case, the required number of *freeholders*, husbandmen (villeins) must be put on the number. It is, later, expressly added that the return is to be made to the Hundred Jury by "each Parish, township, and hamlet, *by itself*."

The matters to which this Statute relate are of great importance. It distinctly recognizes, not only the secular character of all parishes, but that presentments and returns are to be separately made to the Hundred Jury, and to the Officers of the Shire, by each actual division of the Parish; or, as it calls them, each township and hamlet.

The principle recognized and acted on by this statute is precisely as practical and applicable at this day as it was at the date of the Statute. It need only be added that, in other and later records, it is declared that every writ shall be as maintainable in any hamlet having a separate name by which it is known, as in a Parish.‡

The Poor Law of Elizabeth (43 Eliz. c. 2) has incidentally led to numerous questions and decisions as to the divisions of Parishes. The word "Parishes" had alone been used in that Statute; the too narrow interpretation of which word had led to difficulties, and, in point of fact, made the Act of Elizabeth practically a dead letter in many places. To restore the Con-

* The remarkable difference between the spirit of the men who framed and passed this enactment—in the anxiety that mere property should have no undue influence, and those who framed and passed Sturges Bourne's Act in order to give the entire influence to mere property, must strike every one. See after, pp. 62, 63.

† See before, Fortescue, as quoted p. 21.

‡ Rolls of Parliament, 1 Rich. II. No 40; Stat. 1 Hen. V. cap. 5: and see before, p. 20. By 12 and 13 Vict. c. 83, sec. 9, and 15 and 16 Vict. c. 79, sec. 28, the word "Parish" is to be taken to include, for the purposes of those Acts, any Township, Vill, Hamlet, Tything, or any District having a separate Surveyor or Surveyors of Highways.

stitutional and Common Law Principle, as above set forth, a section was introduced in 13 & 14 Car. II. cap. 12 (section 21) which declared that, wherever needful, actual Townships should be recognized, in this matter as in others, as self-existent.* On the application of this declarative Act many cases have come before the Courts. As a general result, the holding has been that, before the separateness of a part of a Parish could be set up, it must be made plain that the benefit of the Act of Elizabeth is unable to be had without such separate action.† It was well said by Lord Mansfield‡ that, if divisions of Parishes were to be allowed to be capriciously made, “By this method a place might be made into a [separate] village which in fact was not so: and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish;” an obvious truth applying equally to any other class of Local Responsibilities. Hence the jealousy of admitting new divisions; which has, however, undoubtedly in some cases been carried to an extreme.§

* See an interesting note on this subject in Eden’s History of the Poor, vol. i. p. 175.

† See 3 Burrow’s Reports, 1614; 1 Term Reports, 376.

‡ R. v. Showler, 3 Burrow, 1392.

§ The bearing upon the topic of this Chapter of the current of decisions by the Courts as to the effect of the Statute of Charles, cannot, probably, be more clearly stated than by putting, in conjunction, the words of three cases. In R. v. Middlesex (Sayer, 148) it was declared that “the Statute 13 and 14 Car. 2 does *only extend* to such places in parishes as are townships or vills;”—which fundamental point is confirmed by R. v. Showler, 3 Bur. 1392; R. v. Welbeck, 2 Strange, 1142: and see Denham v. Dalham, 2 Strange, 1004; Waldron v. Roscarriot, 1 Modern, 78; in which two last cases the essential characteristic of the *constable*, as noted before, is expressly given (see before, p. 16). “But,” it is continued in R. v. Middlesex, “neither the largeness nor the populousness of a division in a parish, even if it were a township or vill, is a reason for the inhabitants thereof to have separate Overseers of the poor, *unless* it appear that, by reason of the largeness of the parish, they have not reaped, or cannot reap, the benefit of the 43 Eliz.” In R. v. Horton, 1 Term Rep. 376, it is said that “wherever there is a constable there is a township.” In Peart v. Westgarth, 3 Bur. 1610, there were six separate constaberies; and yet, “it not appearing that there was an inability in the parish to take the benefit of the Act,” the Court refused to sanction the “frittering of the parish into pieces.” It will thus be seen that the separateness of the vill did not always, as it logically ought to have done (see also Cro. Car. 93), draw separate management in this particular. The cases adjudged on the matter show too much of caprice, it must be admitted, to command much respect. Relating as they do to a specialty, they will be more properly noticed under the head of “Overseers” (Chap. III. Sec. 5). They are valuable to the sub-

It is only the words of the Act of Elizabeth that have caused any questions to be raised on the construction of a Statute, in reference to this point of the Division of Parishes. In all other respects the point is always reduced to the simple fact of the *custom* which convenience has been found to sanction in the place. Thus, in the case of the maintenance of Highways, it is unquestionable that the custom of any place is the sole criterion. Many parishes, accordingly, appoint separate Surveyors for each Township, Hamlet, or Side (as it is sometimes called) into which, for practical convenience, they have been divided; and such divisions are recognized by Law.*

Circumstances have led to other statutory recognitions of separated parts of Parishes for secular purposes. Thus the rapid increase of the Metropolis during the last two centuries made the due Local Management of its parts inconvenient; and many new divisions took place in conformity with an Act of the tenth year of Anne, cap. 20; from the time of which Act alone many of the most important Metropolitan Parishes date their existence as separate Institutions. Again, the Act of 3 and 4 William IV. cap. 90, expressly declares the power of making divisions of Parishes, according to the convenience of the inhabitants, for the purposes of that Act.† Some other instances will hereafter be given.

With regard to the recent subdivisions known as "Ecclesiastical Districts," they are exclusively confined to ecclesias-

ject of the present Chapter as involving numerous facts and illustrations dependent entirely on the question of—what is a vill or a township? This will be well seen by reference to the late case of *R. v. Sharpley*, 18 Jurist, 835, or to the much earlier cases of *Hilton v. Powle*, Cro. Car. 92, and *Nichols v. Walker*, *ib.* 394. The facts set forth in the latter case (the claim to separateness in which was admitted) are so highly illustrative of the subject of the present Chapter that they may be usefully quoted. It is set forth that, "Anciently the village of Totteridge was parcel of the parish of Hatfield: that there was not any legal Act [*i. e.* any Act *extrinsic* to the will of the inhabitants] to sever the said Vill from the Parish of Hatfield: that, even yet, the tithes of Totteridge were paid to the parson of Hatfield: that the parson of Hatfield used always to find a curate at Totteridge." But, on the other hand, "for sixty years past and more," "the said vill of Totteridge has been commonly reputed as a parish by itself; and, through all that time, *constables, churchwardens, and overseers of the poor* have been in existence for the said vill of Totteridge, by the election of the inhabitants therein" [*per electionem inhabitantium ibidem*]. Cro. Car. 394.

* See *R. v. Bush*, 9 Adolphus and Ellis, 820.

† See after, Chap. III. Section 4.

tical purposes, and do not therefore enter into the subject of this Work, more than to make it necessary that careful warning be given against misapprehension arising out of any confusion of names which they may give rise to. The Acts under which these districts have been formed, yield an illustration of the unfortunate habit of our time to deal empirically with subjects of the highest importance, instead of grappling with questions or difficulties on grounds of Principle. So short a time back as the reign of Anne a much more sound course was adopted. Where there seemed a necessity for building new churches, on account of the increase of population, it was felt that the same circumstance would in all probability lead to an equal propriety in making the divisions of Parishes separate for all purposes. The Act of 10 Anne, cap. 20,* already mentioned, expressly contemplates and provides for such a contingency, though of course leaving the determination of the point to the Parishioners themselves. Many Metropolitan Parishes now exist and exercise their functions, as secular Parishes, solely as the result of this Act.

If the ancient limits of a Parish are too large for one thing of common interest,—especially such a thing, in modern times, as Church accommodation,—there is a fair presumption that they are so for other matters of common interest. It is by maintaining the united feeling of common interest in all matters of obligation and duty, that any of these will be best discharged. Separate one of them, make districts for “ecclesiastical purposes only,” and, while it may indeed be thought thus to enhance ecclesiastical authority, the real effect will be to make men ask what they have to do at all, as parishes or otherwise, with any ecclesiastical authority. Our fathers were wiser. They held the affairs of religion to be one of the matters of common interest to all the parish, and to enter into the social life of the neighbourhood; and therefore that these should be always dealt with *as one among the other matters* of common obligation and duty. If a parish was divided for one purpose, it was usually divided for all. * If not so, it was, more commonly and consistently, not the ecclesiastical, but the secular purposes—the original purposes of the primary division of the Parish—that had, as matter of convenience, certain distributive arrangements.†

* See sections 8, 22, 23, 24

† The intention of the founders of new churches is, in itself, deserving of

It has been already stated that a separate church does not always exist in each of the ancient divisions of Parishes.* When a separate church exists, it is usually called a "chapel,"

so much respect, that it is no grateful task to remark upon the character of the numerous Statutes, known as the "Church Building Acts." It is much to be deplored that Acts passed for so excellent a purpose should be marked by every defect that can distinguish crude, careless, and merely empirical legislation. The Statutes of Anne, above noticed, had given such an excellent precedent that there is the less excuse for this more recent legislation. The confusion and inconsistency of these Acts have already led to much mischief, and must now tend every year more and more to produce heartburnings and litigation. The defects of these Acts are not in the slightest degree mended by the "New Parishes Act, 1856." Instead of this, the last-named Act shows as much neglect as any other of the principle of *adaptation*; and, either unknowingly or intentionally, sets at nought, much more than any of the preceding Acts does, the fundamental Principles of the Law of England. It seems indeed its object—one which marks too much the other Church Building Acts *since* the time of Anne—to reverse that which Lord Chief Justice Holt declared to be the Principle of the Common Law of England: that "Parishes were instituted for the ease and benefit of the Parishioners, and not of the Parson" (3 Salkeld, 88). This Act declares, as plainly as language can speak, from beginning to end, that "these new parishes are to be instituted for the ease and benefit of the Parson—and without any regard for the rights of the Parishioners." The ecclesiastical constitution of England has always recognized the Laity as an essential part of the Church. The voice of the laity was recognized and provided for in all matters, as will hereafter be shown in several instances (see Ch. III. Sec. 1, etc.). But the authors of the "New Parishes Act, 1856" seem to have been unaware that such people as a laity exist—except when payments are to be made. Parishes are to be cut up and divided, without those most deeply interested being ever consulted, or their consent being asked or given. Dearly cherished rights, affecting the deepest feelings of humanity, are to be sundered, without those concerned being so much as mentioned. Parishioners are treated as *adscripti glebæ*, to be bought and sold for the benefit of the parson. The whole scope and spirit of the Act are to aggrandise ecclesiastical influence in England. At the same time, inextricable confusion will be introduced by the mere pedantic novelty of calling all ecclesiastical districts "Parishes." Recognized and addressed, as true Parishes have for centuries been, and still are, in all Acts of Parliament, as the secular integral parts, territorially and institutionally, of the country, these new ecclesiastical Parishes, which are an absolute anomaly, will necessarily give rise to confusion and uncertainty in the application both of past and future legislation—as well as in the ordinary transaction of busi-

* In some very rare cases there have existed two distinct churches, as rectories, in one undivided Parish. The case of Mablethorpe is an example. See R. v. Sharpley before cited. Such cases, while from their rarity not needing special notice, do but serve to illustrate the general Principles as to the true nature of the "Parish" which it is the object of the present Chapter to elucidate.

to distinguish it from the original Parish Church. Such "chapels" are entirely distinct in characteristics from churches built under modern building Acts.

ness. Examples of this confusion have already not been wanting; see *R. v. Sharpley*, already quoted, where two old churches in one Parish have led to disputes and litigation. So long as the name "Chapelry" or "District" was alone used, the difficulty was less likely to arise. The desirableness for the practice of all ecclesiastical rites being enjoyed by the new churches (which, *within certain limits* and with due reservations, was unquestionable) was no reason for this change of name. The ancient Chapelries usually enjoyed the practice of those rites.

That the above remarks do but faintly, instead of too strongly, characterize this new Act, the following brief account of its contents will show.

(1.) It does not consolidate the Church Building Acts, and put forth one consistent system in the place of these. It is cumulative upon them.

(2.) It does not deal with religion as one of the affairs of human life, whose spirit, to be genuine, must be blended with the life of every man: but treats it, throughout, as a specialty.

(3.) The new Parishes are to be all *constituted, and their limits defined*, by mere extrinsic authority, *without the least reference to the convenience, opinions, or wishes of the inhabitants* (secs. 2, 11, 14, 15, 25). All power is given, throughout, to the Incumbents, the Bishops, and the Church Commissioners.

(4.) Every person living within the new Parish so formed is, without his consent or even knowledge, to be arbitrarily deprived of all his rights and cherished associations with his own Parish Church, no matter how dear or how long cherished those associations have been (secs. 5, 25, as to pews; 11, 14, and 15 as to all offices of the church—marriage, baptism, churching, burial).

(5.) The dealing with pews, heretofore the right and duty of the Parishioners in vestry assembled, is put out of their hands altogether. The new Parishes are no longer to be an embodiment of the *free church of the people*. The exclusive system of *pew-rents* is introduced. But Commissioners and Bishops are alone to manage and order the questions of *pew-rents*, etc. (secs. 6, 7, 8, and 25). The Parishioners are to have nothing to do with it but to *pay*.

(6.) The Parish Clerk and Sexton are made nominees of the Incumbent alone, instead of being elected, as by Common Law they ought to be, by the Parishioners, whom they ought to serve, and who will provide the funds for paying them (sec. 9).

(7.) Even the Parish Church could not, before, be rebuilt or removed without the express consent of the Parishioners (see 1 & 2 Vict. c. 107, § 16; 58 Geo. 3, c. 45, §§ 14, 59, 60; 59 Geo. 3, c. 134, § 24). But, by this new Act, the Parish itself may be divided into two or more parishes, and all rights of pews and to every use and office of the Church be severed and reassorted, without the slightest reference to the parishioners,—over their heads, and in spite even of unanimous remonstrance (sec. 25). A more monstrous proposition never was suggested—much less enacted.

Such is the progress of ecclesiastical encroachment in England, and such

Several instances of such Chapels are named in Domesday Book. We are told there, for instance, of a number of the freeholders building a chapel on their own land, *because* the parish church could not hold all the parishioners.* The *Inquisitiones Nonarum* contain very many cases of Chapelries, which are treated as perfectly regular and unquestionable. In modern times, since ecclesiastical encroachments have gained a head in England, the public convenience and the *bona fides* of the transaction are treated as entirely secondary matters of consideration. It is laid down that, to constitute a legal "Chapelry," the formal assent of bishop, patron, and rector is necessary.† Our practical ancestors regarded *Principles* and *things*, rather than *precedents* and *forms*; and recognized whatever divisions were found most convenient for the local welfare. Practically, the rigour of a rule so plainly untenable as that which ecclesiastical encroachment has led to being thus professedly set up, is forced to be modified by its being admitted that the existence of the pretended requisites "is to be *inferred* from modern usage,"‡ where the actual origin of the chapelry is not shown.

It must be very distinctly understood that, while the limits of the old "Chapelries" are usually, for the reasons above explained, identical with the secular township, or actual Institution of the Parish, no "ecclesiastical Districts" whatever, and no "New Parishes" under the "New Parishes Act, 1856," have any sort of connection with or relation to any secular affairs; and none of the officers or persons connected with such

the decay of any high-minded sense, or even Christian view, of the position of those for whose benefit alone churches were founded. The smallest amount of sound and comprehensive knowledge of the history and bearings of this subject (which it was the absolute duty of the proposers and enactors of legislation on this matter to have thoroughly mastered) would have made such a Statute impossible, and would, at the same time, have pointed out how simple is the course which might have been satisfactorily and efficiently pursued. The presence, even without such knowledge, of any statesmanlike spirit would have prevented the passing of such an Act. The Statute of Anne still stands as the rebuke of all who have, in our day, attempted legislation on this subject. The result is to be deplored, both as highly injurious to the true and lasting interests of religion and religious peace, and as fraught with many dangers to our most valued Institutions.

* See vol. ii. p. 281 (*b*):—of which chapel it is worth notice that it is said:—"No one in our Hundred knows whether or not it has been dedicated." See before, p. 26.

† See Kennett's *Parochial Antiquities*, pp. 584 and following.

‡ *Carr v. Mostyn*, 19 Law Jl. Exch. 249.

“districts” or “Parishes” have any recognition or authority whatever, or can in any way act or interfere, in the Institution of the true *Parish*, as treated of in this Book. The overlooking of this fact must lead, and has already in some instances led, to much confusion, irregularity, and fatal illegality of proceeding.*

* See my edition of “Metropolis Local Management Act, 1855,” p. 48, note 2: 1; and this point touched on again, after, in the sections on *Churchwardens and Overseers* in Chapter III.

CHAPTER II.

MODE OF DISCHARGING THE FUNCTIONS OF THE PARISH:
 BYE-LAWS: THE VESTRY: NOTICE AND SUMMONS: DELEGATED AUTHORITY.

THE secular origin and character of *the Parish* have been shown. It has been shown that its objects and purposes are secular; and that, whatever ecclesiastical arrangements have become connected with it, these are merely superadded, and can in no way alter the character, obligations, or powers of *the Parish* as a secular Institution.

Attention has already been called to the distinction, a most important one, between the constitutional arrangements for criminal and civil Inquiry and Adjudication in every place, (the Sheriff's Tourns and Leets, the Shire and Hundred Courts),—whose business is, to see that all needing doing is done, and that all wrong-doing is punished,*—and the Legislative and Executive functions of the Parish.

The Parish is responsible for the maintenance of the public peace. It is penally responsible, as an integral part of the Hundred, for riots and robberies committed within it;—a responsibility which used to be every day strictly enforced, and the actual enforcement of which can be the only certain guarantee for the due maintenance of the public peace. It is responsible for the proper keeping of all highways, watercourses, and other like things which affect the public convenience. It is responsible for the subsistence of those among its number who are unable to support themselves. It has, moreover, the general obligation and power to do all that the common good of the inhabitants requires.

* See further hereon, Chap. VII. Sec. 2.

The important practical question arises :—how are the obligations and powers thus inherent in the Parish to be fulfilled? The attempt to confound the Parish with ecclesiastical institutions and jurisdictions, has introduced into this, as into other parts of the subject, much mischievous confusion.

The following quotations contain illustrations of the two distinct modes in which the obligations of the Parish may be, and have always been, fulfilled. They practically illustrate, *first*, action by the Body of the Parishioners themselves; *second*, by some of themselves to whom, upon their own choice, special duties have been given in charge, for the sake of greater executive convenience. Both quotations illustrate, at the same time, the thoroughly secular character of the Parish.

In the first case, in reference to some great outrages, the Sheriffs and other Wardens of the peace in each shire, are required to cause to come before them the four men and the provost* of every Parish; and to cause these to summon all the men themselves of the Parish, when any wrong is done or threatened in any Parish: “and the said *men of the Parishes* are required, if need be, to raise the hue and cry, and follow the offenders from Parish to Parish, and from hundred to hundred, and from shire to shire, and arrest, keep, and safely guard them.”†

The other example declares that no man and horse in the king's service shall, even in the course of any official progress or sojourn in the fulfilment of duty, be anywhere entitled to provision, *i. e.* be billeted, without a note in writing from the Marshal having been first delivered to *the Constable of the Parish*. The necessary provision shall then be found by the constable of the Parish; and he shall cause what has been taken to be valued by *sworn men of the Parish*; and payment shall be made daily according to the price thus fixed.‡ To which it may be added, as showing that the responsibility is on the *place*, not on the officers as persons, that, in another very similar record, it is declared that, if any one shall offend, “he shall im-

* See before, p. 17.

† Rolls of Parliament, 6 Edw. III. No. 5. See the Statute of Winchester (13 Edw. I.), 28 Edw. III. cap. 11, etc., hereafter noticed, Chap. III. Sec. 3.

‡ Rolls of Parliament, 21 Edw. III. No. 22.

mediately be arrested *by the Parish* where the wrong is done, and committed to the nearest gaol.”*

The Parish, then, as a body, is the moving and responsible power, in every case. It will be well to consider, first, when and how it acts in its original capacity. The consideration of powers executed by representative delegation will properly follow.

It is very necessary that the clear distinction should be understood at the outset, between the *requirement* that an obligation shall be fulfilled, and the *means* to the actual fulfilment of that obligation. In the keeping this distinction always clear, lies the most essential element of good government and of the healthy administration of all affairs. The entire losing sight of this distinction by those who, in our day, rush with hasty and ill-considered legislation to tamper with our Institutions, has led to much confusion and to very great mischiefs. In former times the distinction was well preserved. It will always be so by the true Statesman,—by him who has at heart the public good, and not the mere increase of patronage and functionarism.

It is the business of the State to take care that Institutions exist, active and efficient, by which it shall be ensured that every individual and every place fulfils the obligations that are owing by each to all others.† What it has to do is, simply, thus to secure the *fact* of this fulfilment;—the non-violation of what the *common* good and the rights of other individuals require. It has nothing to do with the *mode* of fulfilment. That is a matter which only those concerned can, in their recognized and responsible Institutions, and with that full knowledge of Local conditions which only they can possess, properly deal with; and the casting on these Institutions the responsibility of fulfilling the obligations, is the best stimulus to those efforts, and to that moral and intellectual tone and spirit, which can alone produce the best results. Incidentally, this has the surest tendency to develope the highest moral and intellectual capacities of man. The State may sometimes use fully *suggest* on such matters: it can never, without mischief, *dictate*.‡

* Stat. 28 Edw. I. cap. 2.

† See Chap. III. Sec. 15, and Chap. VII. Secs. 2 and 13.

‡ Such suggestions being, however, never more than general and Institutional; never minute and peddling, after the manner of too many modern

On the modes of attaining the first of these ends, the keeping up the sense and fact of *obligation*, I do not now touch. They have been already glanced at,* and will again be so.† The present point is, the practical mode and means to the fulfilment of the obligations of the Parish, considered as a legislative and executive Institution.

The Common Law clearly recognizes the power of every community, having fixed bounds, to make such Regulations, on any matter relating to its own internal management and affairs and common welfare, as it pleases; and upholds its full authority to carry such regulations out, even by the utmost process of the law. Lord Coke expressly says, that the “inhabitants of a town, without any custom, may make Ordinances or Bye-laws for the reparation of the church, or a highway, or of *any such thing which is for the general good of the public*; and in such case *the greater part shall bind the whole*, without any custom.”‡ The word “town” is here used, as before explained, for “Parish.” In the case, indeed, more particularly referred to by Lord Coke in this passage,§ the question arose on a distraint made, under a bye-law of a Parish, by collectors of a rate made and authorized only (as was also the appointment of the collectors themselves) by vote of the Parish.|| And Lord Coke himself reports the decision of the highest court in another case,—where one not present had resisted payment of a rate made, in precisely the same way and for precisely the same purpose, by a Parish,—in the following remarkable and universally practically applicable words:—“He may come, if he will, to the assemblies of the parishioners, when they meet together for such purposes. . . . And the churchwardens and greater part of the parishioners, on such general warning met together, might make such a tax by their [bye-] law.”¶

It has, in fact, often been declared, by all the judges of the highest courts, that “those in a *Leet* can make bye-laws, and their own assent shall bind them. And a *Parish* can make bye-laws, and these shall bind them.”**

Acts of Parliament. Over-legislation is immeasurably worse than no legislation at all.

* Before, p. 22.

† See Chap. VII. throughout.

‡ 5 Reports, p. 63 *a*.

§ Year Books, 44 Edw. III. fo. 18.

|| See after, p. 49, and this case given, at length, in Chap. VIII. Sec. 5.

¶ 5 Reports, p. 67 *b*.

** It will be useful to illustrate this fundamentally important and prac-

The clear Principle on which such Bye-Laws rest is this :—that, whenever there would seem likely to be any damage, danger, or inconvenience to the community but for a given bye-law,—which damage, danger, or inconvenience that Bye-Law is passed

tical point by an extract from a case in which the three instances of the tenants under a *Manor* (Copyholders), those owing service to the *Leet*, and the inhabitants of a *Parish*, are respectively named. In all three cases, the question of validity is declared to depend on the “*legal commencement*” of the Bye-Law ; that is, the actual or implied *consent* of those affected. No *stranger* can, of course, be affected by a bye-law of any Local Institution,—either as to being bound by it, or taking advantage of it. That would be contrary to the very essence of such Institutions. They legislate on their internal, not on their external, relations. The latter, upon precisely the same principle that the assent, express or implied, of the whole local community is necessary to its Bye-Laws, need all external assents. But all within, and at any time forming part of, the Institution, will be bound, whether present and actual party to it or not, if the bye-law was made in an actual assembly properly summoned. The same means can, of course, be taken to repeal or alter any Standing Bye-Law, if found to work ill.

The case alluded to is as follows.

An action of Debt was brought for a penalty,—by custom as alleged,—for breaking the Pound of a Lord of a Manor.

“*All the Justices* are of opinion, that the prescription of custom is not good to bind any *stranger*, because it cannot have a legal commencement. But if the custom were, that if any *tenant* who holds of the MANOR breaks the pound, *he* should pay £3. 0s. 9d., it is a good custom ; because it could have a legal commencement ; for the Lord may give the tenements to hold of the manor by certain services. And so, if the tenants were to grant at this day to the Lord, that, if the rent were in arrear, they should pay 20s., it is good ; and by their assent they would be bound. And those holding a LEET [residents of a year and a day] may make BYE-LAWS, and their assent amongst themselves will bind them. And in a Leet it can be prescribed that, for every affray or bloodshed, there shall be paid a certain sum of money ; and it is good ; and it can be prescribed to distrain for that, and to sell the distress : and the reason is, because it is the Court of the King, and it derives its interest from the King. [That is, it is a court of Criminal Jurisdiction.] And a PARISH can make BYE-LAWS amongst themselves ; as, that any one who puts his beast on such a common, shall pay 10s. ;—this is good, and will bind them.”—Year Books, 11 Henry VII. fo. 14. Compare 21 Hen. VII. fo. 40. The following extract illustrates the point of the necessary interest among all parties affected by such Bye-Law. “If the inhabitants of any Parish choose to enact for a law, that whosoever holds so much land, shall yearly pay to the church of the same parish a certain sum ; and, for every default, forfeit 20d. to the *Lord* of the said parish [that is, the Lord of the Manor within the Parish] ; although that custom has existed from time immemorial, yet that custom is void ; because, by the non-payment of the said sum to the church, the Lord sustains no damage ; whence it follows that by this he must have no gain. But, if the said forfeit of 20d. was to be paid to the appointed Wardens of that Church, then such penal forfeit

in order to help to find a remedy for ;—or whenever any public advantage seems likely to be forwarded by such a Bye-Law ;—the making of such Bye-Law is the fulfilment of a common duty, and therefore unimpeachable.*

The very word “Bye-Law” is, indeed, one which may be said to prove itself. It is found, in this English form, in the oldest records of the adjudications of the highest courts. *Bye* is an ancient Saxon word, meaning *inhabited district*—*Parish*. It ends the name of many English towns and parishes ;—as Der-by, Sel-by, Harrow-by, Whit-by. The most literal meaning of “*Bye-Laws*” is, *Local Ordinances*, more particularly such as the *Ordinances of a Parish Vestry*. They are even thus called “ordinances” in what are strictly the official and technical records of the Law of England. The following instance illustrates, at the same time, the general point already stated as to Bye-Laws, and this use of the word in a record which, in itself, —much more when expressly cited and applied by Lord Coke, —no court of law in England can venture to treat as of otherwise than the highest authority. It is extracted from the same case (of a *Parish*) as has been stated above to be expressly referred to by Lord Coke.†—“There is the usage, through the length and breadth of the land [per my per tout le terre], for laws called ‘Bye-Laws’ [so in original]—to wit, by assent of the neighbours,—for *raising money* to make a bridge, or a

to the said Churchwardens would be good ; because they are bound [by the Parish] to the reparation of the Church ; and so, if the said sum shall not have been paid to the Church, then they, by that non-payment, would sustain damage ; wherefore they might take satisfaction for the said sum : and so a law constituted in this manner would be good.”—Year Books, 21 Hen. VII. fo. 20. And see the case quoted on next page.

Innumerable cases might be added to illustrate all these points. But my object is, to make them clearly understood ; not to seem to encumber these pages with a mere mass of authorities.

The learned Selden was so fully alive to this inherent power of every place to make Bye-Laws, that he goes so far as to illustrate the powers of Convocation, within the limits of its lawful action, by reference to this power of every place to make Bye-Laws. “We have nothing,” he says, “so nearly expresses the power of a Convocation, in respect of a Parliament, as a Court Leet, where they have a power to make Bye-Laws, as they call them.” (*Table Talk*, article “Convocation.”)

In Chap. III. Sec. 8, and Chap. VIII. Sec. 7, some illustrations will be given as to amercements and penalties, and the recovery of them. These in fact involve the further illustration of the present subject.

* See the last note.

† See before, p. 47.

causey [any raised way], or sewer; and for assessing every man in a sum certain; and that they shall be able to distrain for this. . . . And *this thing is done throughout the land*; and avowry is maintainable, for that reason, in this case. And if all the neighbours will not come, after warning duly given, nevertheless those who have made default will be bound, as much as those who were present. . . . If such ‘ordinance’ [so in original] be made for a thing touching a *probable common damage* [“for the general good,” as Coke has it],—such as to make a bridge, or causey, or sewer,—the Law as thus stated is beyond doubt. But, if it be only for the advantage of individuals [instead of the public], none will be bound except those who have expressly assented: *et sic nota.*”* The very exception thus noted, does but mark the Common Law principle as to the validity of all true Bye-Laws the more strongly.

All matters of local taxation and rating depend entirely on the same principle. A Church Rate, for instance, has never been good and valid on any other ground than because it is made by a Bye-Law of a Parish. It is not good because it is a Church Rate; but a church rate is only good if made by an actual Bye-Law of the Parish. And any other rate made by an actual Bye-Law, for any other purpose of common good, is, for precisely the same reason, equally good and valid. In a well-known case it is said, speaking of a Church Rate;—“It is *like to a bridge or a highway*: a *distringas* shall issue against the inhabitants to make them repair it; but neither the King’s Court nor the justices of peace can impose a tax for it. The churchwardens cannot. None but Parliament can *impose* [*i. e.* on others] a tax. *But the greater part of a parish can MAKE A BYE-LAW*; and to this purpose they are a Corporation.”† In the latest case on the subject it is laid down, as to a church rate:—“They are to proceed by making what has been called a Bye-Law or ordinance.”‡

Due warning of the intention to consider the subject of any such bye-law must be given. The levying of a tax cannot be

* See the case in full, and notes thereupon, after, Chap. VIII. Sec. 5.

† *Rogers v. Davenant*, 1 Modern Reports, p. 194. See before, pp. 32, 33. As to the corporate character of the Parish, see after, pp. 70, 78, 81, 99, and Chaps. IV. and V.

‡ Mr. Justice Crompton, in the Braintree Case, before the House of Lords. And see the able judgment of Mr. Baron Martin in that Case.

done on the mere "spur of the occasion."* After due notice, as has been seen, all are bound by the Vote of the *Majority present*. "If but forty of the parish appear, the major part [of those thus present] may tax the whole."† However small the number, the majority of those attending, after a lawful summons, binds the whole.

Besides the making of Bye-Laws and Ordinances, meetings together of the inhabitants are important for other purposes. The very power of making Bye-Laws includes within itself the obvious incident of *discussion*. It is of the highest importance that this should be borne in habitual practical remembrance. A meeting may often be most usefully summoned to "consider" certain subjects, before any can be prepared to submit any Bye-Law or Resolution in regard to them. The Legislature has in many instances recognized this function of the Parish, by requiring that certain documents shall be laid before the assembled inhabitants.‡ The purpose of this is, that the facts shall be brought to the immediate knowledge of those concerned, and that the opportunity of considering the propriety of taking any step in reference thereto shall be given. Parishioners and Parish Officers should take care that all such requisitions are fulfilled. There is too much remissness, often, in this respect. Besides these special occasions, affairs are continually arising which make the assembling of the inhabitants, to be informed of and consider them, a matter of essential propriety.

Parish meetings afford also valuable means of explanations being given on matters affecting, or which are conceived to affect, the Local rights and interests. The holding of them for such purposes may often be the means of preventing heartburning and even litigation.§

The assembly of the Parishioners for the purpose of making Bye-Laws, or of receiving communications or holding discus-

* *Faulkner v. Elgar*, 4 Barnewall and Cresswell, p. 458.

† *Wayte v. German*, 2 Shower's Reports, p. 141; *James v. Tutney*, Cro. Car. 497.

‡ See, for example, as to dedication of Highways, 5 & 6 Wm. IV. c. 50, s. 23; as to Burial Grounds, 15 & 16 Vict. c. 85, s. 2; as to County Rate, 15 & 16 Vict. c. 81, secs. 5, 13; as to Charities, 18 & 19 Vict. c. 124, s. 44; as to union of Benefices, 18 & 19 Vict. c. 127, s. 2; etc. etc.

§ See a striking instance of this in *ex parte Doveton* (Queen's Bench, 12 Nov. 1855; but not yet reported), where two of the Judges expressed themselves very decidedly to the above effect.

sion on any matters that concern the common welfare, is usually known in our time by the name of the *Vestry*. It has formerly been known by the simple name of Parish Meeting, or by that of *Convocation*, *Convention*, etc., of the Parishioners. The name is wholly immaterial.

It has long ago been settled to be Common Right and Common Law that whoever occupies land or other premises in a parish, inasmuch as he has the benefits of what is done for the common good of the Parish, cannot escape his obligations, as a citizen, by merely dwelling out of the Parish.* In a case in the highest courts, it was emphatically, and very soundly, declared, more than 200 years ago, that “although the house wherein Jeffrey dwelt be in another parish, yet, forasmuch as he had lands in the parish of Haylesham in his proper possession and manurance, he is in law a parishioner of Haylesham. *For the place where he lies, sleeps, or eats, doth not make him a parishioner only ; but also, forasmuch as he manures lands in Haylesham, and by that is resident upon it, that makes him a parishioner of Haylesham also.*” And the same case proceeded to declare (incidentally illustrating at the same time the use of the word “town” equivalently for “parish”),—“Altho’ he dwells in another town, yet, forasmuch as in judgment of law he is an inhabitant and parishioner of Haylesham, he may come, if he will, to the assemblies of the parishioners of Haylesham, when they meet together for such purposes.”†

The broad ground of Common Right on which the character of the assemblies of the parishioners has always rested, is shown strikingly by the fact, that, not only did those who were distinguished from the nominally actual land-owners (*i. e.* lords of manors) by the term “villeins”‡—the objects of much modern uninformed sentimental sympathy—take a direct part in those Inquiries which, made through the national Institutions of Local Self-Government, form the Body of Returns called “Domesday Book;” but both the Statute Book and the records of later Parish Inquiries inform us, that the “villeins” and husbandmen took an active and intelligent part in the affairs

* See Rolls of Parliament, 21 Edw. III. Pet. No. 7 ; 21 & 22 Edw. III. Pet. No. 19 ; *Ib.* No. 26 ; 9 Hen. IV. No. 53, etc. ; and after, Ch. VII. Sec. 11.

† 5 Coke’s Reports, pp. 66, 67 ; and see *Fitch v. Fitch*, 2 Espinasse 543.

‡ That is, literally, “parishioners” simply, and not “*liberi tenentes terræ.*” The Lords of Manors were, in fact, as much holders under conditions of tenure as the “villeins” were. See after, p. 104.

of Parishes. The *Inquisitiones Nonarum* contain several examples of this distinctly stated, as well as many implied; while, in a Statute already quoted, express provision for it is found.*

It has been already seen that no Bye-Law will be good and binding unless made "after warning duly given." Similar warning is obviously necessary whatever may be the purpose of the Parish meeting. Hence a matter of primary importance to the sound and lawful action of the Parish, is the giving of due warning, summons, or notice, on every occasion of a Parish meeting, or Vestry. The old custom, as well as obvious rightness, has always required sufficient notice and summons before every meeting of the Parishioners for any purpose. Some of these Parish meetings are held at stated times; others as occasion needs. On account of the gathering of all weekly in the church, the custom grew up of notice being always given there, in the middle of the service. The old custom further was,—which prevailed, indeed, till the close of the last century,—to hold the Parish meeting on the Sunday, after church. This mode of notice, and place and time of meeting, never had anything whatever to do with any ecclesiastical pretensions. In that respect no charge of ecclesiastical encroachment can be made. They were mere matters of obvious convenience and consistency, in times when men habitually gathered together, without divisions among them, on Sundays; and when religion was felt and dealt with as a part of life, and not treated as a heartless form, to be put on once a week, and distinguished by its speciality and separateness from life, instead of by leavening and humanizing the whole. The hollow conventional tendencies of our day, having taught men (contrary to the words of the Great Teacher) to esteem their religious duties and those to their neighbour *not* to be part of one and the same great Law, have discountenanced, with affected purism, both parts of this custom. By an Act passed in 1818 (58 Geo. III. cap. 69), commonly known as "Sturges Bourne's Act," the old common custom, of a Notice given in the Church, was recognized and re-declared. It was added, however,—to which no one could object,—that a written Notice of the Vestry must be fixed on the church or chapel doors, at least three days before a meeting of the Parish, the first of such days being Sunday.† An Act

* See before, p. 36; and see Chap. VII. Sec. 11.

† The day of meeting can never, therefore, be earlier than *Thursday* in

passed twenty years later,* however, when both empirical legislation and ecclesiastical pretensions had made further advances takes the usual course which encroachments on Institution and Liberties do. The old and most important custom is now repealed; and only the new and imperfect method, of a written Notice, is kept; a Notice not published in any oral manner and entirely dependent on the accident of its catching the eye for it to be known at all. This vicious alteration has necessarily had a very great and injurious effect upon the attendance at Vestries, and consequently upon their satisfactory action. The Act in question goes so far as to make the old and valuable custom of oral Notice actually illegal. A still later Act (13 and 14 Vict. cap. 57) proclaims the practice and custom of all former ages, up to the year 1850, to be a "scandal to religion"!† Thus do conventionalism and formalism aid the work of functionarism, and help on the ends of the Spoilers of our Institutions.

The Notices of Vestry should, however, be affixed to all places of public resort, including on "*or near to*" the doors of *all* places of worship. The proper person to sign these is one or both of the churchwardens. In the spirit of ecclesiastical encroachment, an attempt has been sometimes made to suggest that the Minister should interfere in this matter. Nothing can be more improper.‡ It will be hereafter shown that his *the same week* (see *R. v. Best*, 16 Law Journal Rep. M. C. 338). But it may be for any *later* day in the same week, or an early day of the following week.

* 7 Wm. IV. and 1 Vict. c. 45.

† A mistake is often made in referring to this Act. It is quoted as *prohibiting* meetings in the Church. This is entirely erroneous. Though the spirit of the Act is thus unprotestant and bad, the acting upon it happily depends on the will of the Vestry. See after, pp. 95, 96 *note*, and Chap. III. Sec. 14.

‡ It is necessary distinctly to understand that even the Act of 7 Wm. IV. & 1 Vict. c. 45 gives no such power to the minister. On the contrary, both that act and 58 Geo. III. c. 69 are silent as to the Summoner. It is a Common Law duty, to be discharged by the *de facto* secular head of the Parish. Hence it is expressly laid down that "*the churchwardens must summon the parish*:" 1 Modern Reports, p. 236; and "*the parson never summons the Vestries, that being the office of the Churchwardens*:" Strange's Reports, 1045. The same thing is expressly ordered by numerous Statutes requiring Parish meetings to be held on special occasions. Thus, for example, 1 & 2 Wm. IV. c. 60; 3 & 4 Wm. IV. c. 90; 15 & 16 Vict. c. 85; 18 & 19 Vict. c. 120; and many other instances. See also before, p. 51 *note* †. What the empirical Act of 7 Wm. IV. and 1 Vict. c. 45 says is, that the written notice must, before being fixed on the principal door of the

interference in any way at a Vestry is illegal. The Churchwardens, or one of them, are the persons to summon ordinary Vestry Meetings. The Constable used to be the person to summon all such meetings; but the position of principal Parish Officer, in which character the Constable was summoner, has long been filled by the Churchwardens. It is in this character that the latter now summon, and may often be compelled by legal process to summon, Vestry Meetings. The parishioners should, however, always take care to have a clear understanding, before electing churchwardens, that these, or one of them, will summon Vestries whenever desired. Certain Vestries, on some matters relating to Highways, are, as will presently be seen, very properly required to be summoned by the Highway Surveyors. The Overseers, also, summon certain Vestries.

In many parishes it is the rule, and it ought to be carried out in all of any extent, that a printed copy of the notice calling each Vestry, shall be left by the Beadel at every house in the Parish, before the day of meeting.*

The Notice itself, whether it be printed and distributed, or only posted on or near the Church and Chapel doors, must be so full and exact as to leave no ground for the plea of surprise.† It must state plainly the place, the day, and the hour,

church, etc., have a certain signature (in alternatives, of which the churchwarden stands first). I conceive it clear that a Vestry summoned by the Minister alone, of his own authority, would not be a legal Vestry. No one is bound to heed it. See further, bottom of p. 91.

* See *Rogers v. Davenant*, 1 Modern Rep. 236.

† Attention has already been called in the text to the words “on or near.” The place in which a church or chapel stands is often enclosed by outer Gates; so that, except just during service time, no notice fixed *on* the door can, in fact, be seen. The use of the clear three days’ notice is, that in passing to and fro, all may see it. For a mere piece of pedantry, many churchwardens will insist on fixing the notice *on* the door, instead of,—what ought to be done in all such cases,—*near* to it, namely on a Board at the outer gates leading up to the door. This course is strongly to be condemned; and the Vestry in such places should insist on its being corrected. It has already been stated that the notice should be fixed on or near the doors of *all* chapels. A doubt has, certainly very inconsistently and injudiciously, been attempted to be raised whether dissenting chapels should be included. (See *Ormerod v. Chadwick*, 16 M. & W. 367.) The suggestion of such a doubt shows that the intention and policy of the Common Law and of the Statute 58 Geo. III. c. 69 (which is for the most part declaratory merely) are lost sight of. That intention and policy are—that full *Notice* shall be given to *all* in the Parish. There cannot be the least doubt that the Notice is bound to be fixed on all dissenting chapels as well as on all chapels of the

of the proposed meeting. It must further state, concisely but clearly, the special object or objects of the meeting. It has been seen that no bye-law or rate can be made without such notice or warning. Even in the case of an adjourned meeting, it is proper that notice should be given, though it is not necessary, unless some special new matter arise, that the notice of an adjourned Vestry should repeat the statement of objects.* The adjourned Vestry is the mere continuation of the original one.

It is usual to end notices of Vestry, after the statement of the special purpose of the meeting, with the words "and on other parochial business." But it must be distinctly understood that, under these general words, no important business can be done and ended. The words are highly useful, as a notice that any matter can be brought forward and *discussed*. Under these words, important matters are often brought before the Vestry and considered, which might otherwise be neglected, and hence mischief be suffered. But the proper course to take, when it is intended to follow this up by definite action, will be, to move that the Vestry be adjourned to a given day, and that, on that day, such and such a matter be considered, and such action taken thereupon as the Vestry may think fit.

This is the most convenient place to remark that, ordinarily, any Vestry meeting may be adjourned from time to time; which is often a useful practice where an important discussion has arisen. Even where an Act of Parliament, having named a particular Vestry meeting, requires a thing to be done "at the said Vestry meeting" (a very usual mode of putting it), the meeting, as first summoned, may be *continued*, by adjournment, to any fixed time, and the adjourned meeting will still be the original Vestry and a compliance with the Act; and this, however many times the adjournment may take place.† It is

Established Church. This is made the clearer by the words of sec. 7 of 58 Geo. III. c. 69,—which states that Notice shall be given in such manner "as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively." The actual and principal decision in the case of *Ormerod v. Chadwick* directly confirms, and is indeed based upon, this ground; namely, that *all churches and chapels that are in use* should have notice affixed. See further, *R. v. Marriott*, 12 A. & E. 779, and *R. v. Whipp*, 4 Q. B. 141.

* *Scadding v. Lorant*, 13 Q. B. 706; and affirmed 3 H. L. Ca., 418.

† See *R. v. Newington*, 17 Law Journal Rep. Q. B. p. 220.

under such adjournments that *Polling*, presently to be mentioned, takes place. But there are some cases in which Acts of Parliament adhere more strictly to the Common Law principle and practice,—and where the proceeding to be carried out is required to be done within a certain given time, in which case of course an adjournment *beyond* that time would vitiate the proceeding; or where it is specified that the act must be done *by those present* at a specific Vestry meeting,—in which case there can be no adjournment for a Poll, but the Vote must be taken, as it ought always to be, by the voices of those present, and none can shrink from the duty of giving his vote.* Some late Acts give examples of this more wholesome system; such as the Lighting Act,† Public Libraries Act,‡ and Highway Act;§ by the first two of which, the adoption of the Act is to be determined by the assent of “two-thirds of the ratepayers present at such meeting;” and by the last, the Highway Board is (within fourteen days after the 25th March) to be agreed on by “two-thirds of the votes of the Vestrymen present at such meeting.” The words in all these cases are precisely equivalent.|| The meeting may in each case adjourn to discuss the matter, but it cannot adjourn to take the vote.

To return to the notice itself:—such notice may be either in print or in writing, or partly in both; but the signatures of the copies posted on or near the church and chapel doors must be the actual signatures of the Churchwardens. And the notice must be stuck up before service begins on the Sunday from which the three clear days’ notice has to be counted.

It is usual, in rural districts, and is a very wholesome custom, that the church Bell shall sound for some time before the meeting. This was, anciently, the universally necessary mode of summons. It is called the *mote-bell*;¶ and has no sort of con-

* See *R. v. Eynsham*, 18 Law Journal Rep. Q. B. 210.

† 3 & 4 Wm. IV. c. 90, s. 8. As to Poll under this Act, see after, p. 136.

‡ 18 & 19 Vict. c. 70, s. 8. There can be no Poll under this section, nor under s. 18 of Highway Act.

§ 5 & 6 Wm. IV. c. 50, s. 18; also s. 9.

|| See p. 59, for another instance where the division of those actually present is indispensable.

¶ *Mote*, *i. e.* moot,—discussion. Such meetings were formerly all called *Polk-motes*, that is, meetings of the folk to deliberate. There was the *Shire-mote*, the *Hundred-mote*, the *Borough-mote*, as well as this *Parish-mote*. *Polk-mote* is generic; the others specific.

nection with, or reference to, any ecclesiastical purpose or idea, any more than the Church Clock has, or the Morning Bell, or the Curfew Bell.

The Vestry Meeting, thus summoned, is in its own hands. That is to say, it is its duty to appoint its own chairman, and to adjourn when itself thinks proper. The senior Churchwarden is usually considered the properest person to appoint chairman. Thus any invidiousness may be avoided. The chairman of this Meeting cannot himself adjourn it, any more than the Speaker of the House of Commons can adjourn that House.*

Attempts have indeed been made, in modern times, to set up pretensions in the Minister, *as Minister*, to preside at and control Vestry meetings. Such pretensions will be considered separately in a later chapter. It is enough now to say that the attempt to set up and carry out such pretensions is wholly inconsistent as well with Ecclesiastical as Common Law.

It is the duty of the chairman, immediately on taking the chair, to cause the minutes of the preceding meeting to be read, slowly and distinctly, so that the meeting shall be able to know whether or not those Minutes are a correct entry of the actual proceedings purporting to be recorded. He must then put it to the Vote whether the meeting "approve" and "confirm" the minutes—that is, as such correct entry.† He

* *Stoughton v. Reynolds*, 2 Strange, 1045. This is a point which did not need a decision. It is self-evident. But I cite this case, which unquestionably states the Law correctly, because in a later case (*R. v. D'Oyly*, 12 A. & E. 139) some misapprehension of the Law arose; the result of which would be to introduce the very greatest confusion into all public business. The case of *R. v. D'Oyly* is more fully noticed in a later Chapter (VI.). That case is inconsistent with itself, as the Vestry was not summoned by the Rector, but, as was proper and right, by the Churchwardens. It has already been directly overruled, on the most material point which it professed to decide, by *R. v. Newington*, 17 Law Journal Rep. Q. B. 220 (which properly re-asserts the Common Law, that it is for the *meeting*, and *not the chairman*, to determine how the vote is to be taken—and therefore, necessarily, when and where). Its novel ruling as to Notice of Vestry is directly contrary to the Law as uniformly declared and settled by decision, statute, and custom before and since; and cannot therefore be entertained for a moment. The value of the case as an authority on any point may, therefore, be readily estimated, but will be more fully shown in Chapter VI.

† Practically speaking, the Minutes of meetings are made, in rough, on sheets of paper at the time, and afterwards entered fair in the bound Minute Book. This Minute Book is then read over, as the first business of the next meeting, and it is put to the vote "that the minutes now read be approved." The meaning of this—and the point is one of very great importance—is *not*

must take care that every parishioner present has the opportunity of expressing himself once on each question that arises. He must take care that every question is brought forward in its proper order; namely, first, such matters, or reports of committees, as arise upon the minutes of the last meeting; next, the matters touching which special notice was given in the summons calling the Vestry; and, lastly, any "other parochial business" that any parishioner may desire to bring forward. He must prevent any one speaking twice on the same question, except in reply or explanation. He must take care that the Vote is taken with fairness and exactness, both affirmative and negative being put upon every question; and he is bound to take steps truly to ascertain the vote. His word cannot settle it.* How the vote shall be taken, it is for the meeting, not the chairman, to determine.† This preliminary point (should any dispute arise upon it) must be determined by *division* of those actually present at the moment of the motion being raised that that the resolutions and acts of the last meeting are to be in any way questioned or reopened on this vote, but, simply, that the minutes read are a *correct entry*. Those hearing them read and voting them approved, are "approvers" in the sense—still sometimes used in other cases—of being *witnesses* to the correctness of the minutes entered.

The Chairman puts his signature to the minutes, as the organ of the meeting, testifying to their correctness. This ought always, properly speaking, to be the Chairman of the meeting itself of which the minutes are the record,—not (if he be a different person) the Chairman of the meeting at which the minutes have been read and approved. The Chairman of the Meeting of which the Minutes are the record, must necessarily be the best attester of any one to their correctness. The real testimony therefore is twofold:—*first*, the Signature of the Chairman; and, *second*, the entry, on the minutes of the *next* meeting, that "the minutes of the *last* meeting were read and *approved*." The principle of this does not seem to have been quite clearly understood. See *Southampton Dock Co. v. Richards*, 1 Manning and Granger 448; and *West London Railway Co. v. Bernard*, 3 Q. B. 873.

At Vestry meetings in rural districts, where the resolutions passed are commonly few, and where considerable intervals often pass between the meetings of the Vestry, the custom is, for the resolutions and other proceedings to be themselves entered in the Minute Book while the Vestry is sitting, and for the entry to be signed, on the spot, by the Chairman and as many as please of those present. Twenty or thirty signatures are often found in such Minute Books.

The Minutes must be entered by the Vestry Clerk, if there be one; if there be none, by one of the Churchwardens. On the vote being put for the approval of the fair entry of them, none can vote on the question of approval but those who were present at the meeting of which they are the minutes.

* See *R. v. Newington*, 17 Law Journal Rep. Q. B. 222; and see *Elt v. Islington Burial Board*, 1 Kay, 449.

† *R. v. St. Pancras*, 11 A. & E. 15.

the vote shall be by ballot, or by open Poll, or by whatever other means shall be deemed convenient by any one who chooses to propose a method.*

Under ordinary circumstances, the Chairman merely presides, without himself giving a vote either way, the numbers on each side usually differing so much that his own vote on either side becomes immaterial. And it is certainly much better that, if possible, the Chairman should remain neutral. But he is still a Parishioner, and cannot be deprived of his right to an opinion. On the contrary, the fact of his being chosen chairman implies, in itself, the placing of greater than ordinary confidence in him, and the vesting him with the powers necessary to carry business to a conclusion. Hence arises, as a necessary incident, the "casting vote" of the Chairman; that is, the right to give, in *addition* to his single vote in common with all other Parishioners, a *second* vote in case the votes on each side turn out to be, without such casting vote, equal. This is a right without which business would sometimes be brought to a dead lock. It is a right, however, which ought only to be exercised with a deep sense of responsibility.†

This brings us to consider somewhat more closely the mode of taking the sense of the Parishioners at any Vestry Meeting.

The former, and correct, practice was, that the votes of those present, after due summons, bind all. Several illustrations, clearly proving this, have been already quoted. All show that, after due warning, "the major part of *them that appear* may bind the Parish.‡" Anything in the shape of a subsequent *Polling* is unsound in principle, unconstitutional in essence, and unsanctioned by any true authority. It is one of the unfortunate innovations which have crept in. The practice itself is no matter of "common right," as sometimes alleged. Quite the reverse. It necessarily operates as a premium and excuse

* The course thus obviously sometimes rendered necessary in the mode of procedure, namely, by *immediate division* of those then actually present, is recognized in the judgment of the Court in *R. v. St. Pancras*, 11 A. & E. 26, 27. See also before, p. 57. As to such *division*, see after, p. 62.

† The 58 Geo. III. c. 69, s. 2, is merely *Declaratory* on this point. The right to a casting Vote is incident to the office of Chairman.—As I have had, and shall have, occasion often to notice certain Acts, or parts of Acts, as *Declaratory*, in contradistinction to what is fresh enactment, I request the reader's attention, once for all, to what is explained as to this very important distinction, and as to the value of Declaratory Acts, in 'Local Self-Government,' pp. 155, 256.

‡ 1 Modern Rep. 236.

for men to neglect their duties. The essence of all English Institutions is Discussion, and conclusion founded thereupon. When men must be present in order to vote,—and, if absent, will be always bound by the votes of those present,—they take care personally to come up ; and, thus coming up, they hear all the discussion ; and so only, upon and by means of discussion, can they learn the full merits, and vote soundly. When they can vote by a subsequent *Poll*, though absent at the discussion (which is the essence and meaning of a “ *Poll* ” as distinguished from a “ *Division* ”), the necessity is, that they vote in ignorance and by prejudice, not according to right and the merits. Men are thus habitually taught to neglect the *duty* of taking a personal part in the considering of, and carrying out, what concerns the welfare of their neighbours. They are taught to regard prejudice rather than truth,—cabal and whipped-up numbers rather than discussion and honest opinion. No innovation has been more pernicious. Every honest man, mindful of his duty, will personally attend every Vestry Meeting, notwithstanding this truly insidious innovation.*

The only excuse, having even any show of plausibility, for the use of the *Poll*, is that in populous parishes the whole cannot otherwise vote.† But this is a fallacy. It is the adoption of *Townships*, or the adaptation of the *Ward* system, that is really needed in such cases.‡ Polling is a device both clumsy and ineffectual.

This mischievous innovation of the *Poll* has, however, though certainly unconstitutional and contrary to Common Law, grown so much into use, and been so much favoured by many of the Statutes that have, of late years, helped to undermine the vitality of our Local Institutions, that it will remain for some time, no doubt, as a common practice. So long as it does thus remain, it is important that it should be clearly understood that the right to demand a *Poll* is one common to every parishioner. The Chairman cannot control the demand in any way. Any parishioner present may demand a *Poll* ; and, if it is not provided for at once, he may compel it, by application to the Court of Queen’s Bench against the Parish officers.§

* On the subject of Polling, and its consequences, see ‘ Local Self-Government and Centralization,’ pp. 81, 185, 198, 245.

† Campbell v. Maund, 5 Adolphus & Ellis, 879 ; R. v. Newington, 17 Law Journal Rep. Q. B. p. 222.

‡ See before, p. 34 and note.

§ Campbell v. Maund, 5 A. & E. 865 ; R. v. Lambeth, 8 A. & E. 356 ; R.

In the great majority of actual cases, however, practically speaking, no Poll is taken. The necessity for a correct taking of the vote becomes, therefore, immediate. The ancient and correct course, as illustrated by several of the cases already quoted, and by very many that might be added, is, for the Body of Parishioners, after deliberation, to *divide*, as is done in the House of Commons to this day. The usual mode of voting in Parish Meetings,—used even now unless where a *Poll* is demanded,—is by show of hands.* Where, however, the number is large, there is considerable difficulty in counting hands; and the best plan to be then adopted is an actual division, by means of the two sides of the room.

Whether the show of hands appears to the Chairman doubtful, or whether, however satisfied the Chairman may be, any one calls for a Division, the Chairman should forthwith *divide the meeting*.† In that case, the doors should be closed; and the Chairman must forthwith name two tellers from each party (that is, two for the *ayes* and two for the *noes*), one of each of whom must count, in company with one of the other party, those on each side of the room, so that the two shall check each other. The whole number present at the meeting must range themselves, *aye* and *no*, on the two opposite sides of the room, and so wait till the counting by the tellers is over. The tellers must then give in to the Chairman the number found on each side, as agreed on between them. If they cannot agree, they must count again. When the Chairman has received the numbers from both sides, he must declare the result. This will thus be obtained speedily, certainly, and satisfactorily, with no room for trickery or cajolery, or whipping-up uninformed voters.‡

Sturges Bourne's Act made another and very remarkable innovation; which, be it observed, could never have been introduced but for the previous introduction of Polling,—thus illustrating, in a striking manner, the way in which one encroachment and violation of principle invariably becomes the stepping-

v. Newington, 17 Law Journal, Q. B. 220: *R. v. Keynsham* (Q. B. 6 May 1856). What was said on this matter in *R. v. D'Oyley*, 12 A. & E. 139, is, like every other point in that case, at variance both with Principle and with every established rule of Law and Practice. As to the practical mode of taking the Poll, see before, p. 56, and, in detail, after, Chap. VII. Sec. 11.

* This is admitted, in the strongest terms, even in *Campbell v. Maund*, 5 A. & E. 882, 883.

† *R. v. St. Pancras*, 11 A. & E. p. 15.

‡ *Ibid.*, p. 27.

stone to another. That Act introduced, for the first time, the system of plurality of votes. This is a complete inversion of every right and constitutional principle. Before that, one man's vote was as good as another's. His vote represented what alone it ought ever to do, the judgment of a free man. The rich man has always more means of helping himself than his poorer neighbour has. He always has more extraneous influence. The depriving the poorer man of the protection of an equal vote,—of the right, that is, to the equal use of his *mind*, (which is the real point),—is entirely unconstitutional and unprecedented, and a measure that nothing can justify.

The stake a man has in the country, or in his parish, is not to be measured by his hoarded wealth. It is best measured by the energy expended, and needing to be expended, either by hand or head, in obtaining the means of living; and so the most strongly felt as needing guarantees for its free exercise and disposition. The man who has earned, and looks forward to earning in the future, his 20s. a week, has at least as real a stake in the country and the parish, and in the maintenance of the peace and welfare of both, as the man who has inherited his twenty thousand pounds a year. And he is full as much interested in judging, and qualified to judge, of all the matters that concern him as a member of the social community. The less a man has of private means, the more important it is to him that every common right, instituted for protecting and securing the private means he has or strives for, should be maintained, and that every common duty should have the opportunity and certainty of being well fulfilled. The only justifiable *test* is that of *bonâ fide* interest. The Common Law very soundly fixed this test at a year and a day's residence;—that is, an actual interest in the place was taken to be proved by a residence there for one whole year, and by the intention of remaining there shown in beginning another year.

The only restriction, in any other sense, upon voters at Parish Meetings, is connected with the fulfilment of the liability to local burthens. In this respect a much more constitutional and sound system prevails, or rather has been maintained (for it was formerly universal), in Parish affairs than in the affairs of parliamentary and borough elections. There is here no *select roll of voters*—a purely artificial device. It is the business of the proper officers to take care that every man occupying

within the Parish is on the Parish Books. He is there as a responsible man. Being there, he comes under obligations to contribute to all local rates and other burthens. Being there, he is a Parishioner, and has a Common Right to a voice at every meeting of Parishioners. If he have not fulfilled his *obligations* in one respect, he cannot rightly claim his *prerogatives* in the other: but no *option* of enrolment is left with himself, nor is ratepaying made a test of his citizenship. His occupancy is the sole test. Ratepaying is simply one co-relative consequence of his occupancy;—of which taking part in, and voting at, all Parish meetings is another but co-relative consequence.*

No term of residence is now necessary to give the full rights of a parishioner. Good taste, and the smallest sense of propriety, will lead every man to watch the course of procedure, and learn the local conditions, in modest silence for a time, before himself taking a prominent part in the affairs of a new neighbourhood; but, in point of law, the moment a man enters a new Parish, as a Parishioner, he becomes clothed with most of the functions, as well as liable to all the burthens, of a full Parishioner. It has been seen that the Common Law adopted a sounder rule. Some late Acts have wisely recurred to this.†

Having thus touched on the true and full Parish Meeting, commonly called the “open Vestry,” it should be added that, in some Parishes, there exists the practice of what is called a

* See before, p. 52, and after, Chap. VII. Sec. 11, on *Enrolment*. It is proper to notice here another circumstance (besides non-fulfilment of the obligations above alluded to) which will deprive a man of his right to take part and vote at a Parish Meeting; namely, the becoming an *Outlaw*. The Law has always been most jealous of any one incurring danger of being put under the ban of Outlawry without full notice, and opportunity given to him to avoid it. By 6 Hen. VIII. c. 4 proclamation of the threatened outlawry is to be made three times, in the County Court and at the Sessions. By 31 Eliz. c. 3 proclamation is to be made, in addition to those at County Court and Sessions, *at the door of the church or chapel of the town or parish* where he who is threatened with Outlawry shall be dwelling. And see 4 & 5 W. & M. c. 22. This still remains the Law, with the exception that, by 7 Wm. IV. and 1 Vict. c. 45, the proclamation must be in writing affixed to the door, and not made orally as before. As to the “*Law-worth man*” and the “*Outlaw*,” see my ‘Government by Commissions,’ p. 329, etc. The point is an important one.

† 3 & 4 Wm. IV. c. 90, s. 14; 4 & 5 Wm. IV. c. 76, s. 40; 18 & 19 Vict. c. 120, s. 16; etc.

"select Vestry." On the nature of this, and the Acts which affect it, I shall treat in considering Parish Committees.*

It must be remembered that all that has been thus said of the Parish Vestry, applies equally to the Vestry of any Township, Hamlet, Tything, or otherwise, where a Vestry, separate from that of the original Parish, has been held by custom, or under any Local Act, or by virtue of any other lawful sanction.† An apparent difficulty has sometimes arisen as to what constitutes the "Vestry" in some particular Parish or Hamlet,—owing to the loose language often used in both Local and General Acts of Parliament. This difficulty has particularly arisen where there exists an elected or representative Body, to transact some of the ordinary functions of the Vestry, while the old Common Law Body of the whole Parishioners still meets once a year to choose Churchwardens and Overseers. Every case must, of course, depend on its own states of fact. I have seen no such case in which, on a full consideration of all the facts, and comparison of these with the principles of the Common Law, it has not been possible clearly to reconcile the apparent difficulty. It is sufficient now to say, that it does not follow that, because the members of an elected Body are called "Vestrymen," therefore that Body is "the Vestry." Nor, on the other hand, because another Body is merely described as a "Meeting of Parishioners," is it any the less "the Vestry." It is the being a lawfully summoned meeting of "*the Parishioners*" that constitutes it a Vestry.‡

* Chapter IV.

† See before, pp. 33–43. Also 58 Geo. III. c. 69, s. 7, which is, however, merely declaratory of the Common Law.

‡ See before, p. 52. The Burials Act of 15 & 16 Vict. c. 85, and Baths and Washhouses Act of 9 & 10 Vict. c. 74, make their interpretation of "Vestry" to be, "the inhabitants of the Parish lawfully assembled *in Vestry*, or *for any of the purposes for which Vestries* are holden." The Baths and Washhouses Act of 10 & 11 Vict. c. 61 varies this interpretation—and it is strange that the later Burials Act did not follow this, instead of the last quoted and less comprehensive interpretation. The language of 10 & 11 Vict. c. 61 is:—"Any Body of persons, *by whatever name distinguished*, acting, by virtue of any *Act of Parliament, Prescription, custom, or otherwise*, as *or instead of* a Vestry or Select Vestry."—This is a good definition of what is here meant by "the Vestry." See also 18 & 19 Vict. c. 70, s. 3.

Though this work does not treat of ecclesiastical matters, and therefore, as already stated, the "Ecclesiastical Districts" and "New Parishes" which have been or may be formed under the Church Building Acts and 'New Parishes Act, 1856,' do not come within its scope, it is of much practical

Many matters of practical detail can be dealt with, executive, far better by small bodies, specially appointed for the purpose, than by large ones. Hence the system of appointing Committees has grown up, wherever free government exists. It prevails throughout all parts of our constitutional system from the Parish Vestry to the House of Commons. The Cabinet itself (though the fact is often lost sight of) is but a Committee of the Privy Council. The Jury is a Committee of the Shire or Borough for which it serves. This system has long prevailed in the management of Parish affairs; and will therefore properly form a special topic, to be hereafter dealt with.

importance, in order to prevent confusion, to point out the position in which the *nominal* Vestry of any such ecclesiastical District or New Parish stands. It should first be remarked that while, under the Church Building Acts of 59 Geo. III. c. 134, 3 Geo. IV. c. 72, and 3 & 4 Vict. c. 60, these Vestries were "Select," the Act of 14 & 15 Vict. c. 97 abolished this "Select Vestry." The Vestries of all district churches and "New Parishes" are now *open*—that is, they consist of all pew-occupiers. But these Vestries have nothing whatever to do with anything except "the care and management of the concerns of the church or chapel, or the repairs thereof, and other matters and things relating thereto." They are not a "Vestry" in the sense of any of the Acts quoted at the beginning of this Note, nor in that of sec. 44 of the Charitable Trusts Act, 1855 (by which accounts of Charities are to be laid before the Vestry), nor in that of any other Act of a similar nature (see before, p. 51, *note*). Without a clear understanding of this point, confusion is certain to arise, as already pointed out before, p. 40, *note*, especially since the New Parishes Act, 1856. All such Districts and New Parishes are constituted for, and limited to, "*ecclesiastical purposes only*," and are "not to be deemed districts for any other purpose whatsoever" (see 59 Geo. III. c. 134, s. 6; 1 & 2 Wm. IV. c. 38, s. 10; 1 & 2 Vict. c. 106, s. 26; 19 & 20 Vict. c. 104, preamble, and secs. 14 & 25; and all the other Church Building Acts). "No divisions of any Parish or extra-parochial place, whether it be divided into separate parishes with the consent of the patron and Bishop of the diocese, or into district parishes, shall in any manner apply to any *poor or other parochial rates* which may be raised in the parish or extra-parochial place so divided, or in any such separated parish or district parish; or to any *powers relating to any such rates*; or to *holding Vestries, or appointment or powers of Parish officers*; or to any Act or Acts of Parliament, or law or custom relating thereto, save and except as to *church rates* in so far as the same are regulated by the provisions of this Act [see 58 Geo. III. c. 45, s. 71, and after, Chap. VIII. Sec. 5]: *but the original Parish shall, to all such purposes, remain and continue in law a Parish to all intents as if no such division thereof into separate parishes or district parishes had been made*;" 58 Geo. III. c. 45, s. 31. See, upon the construction of this Act, the remarkable case of *Cockburn v. Harvey*, 2 B. and Ad. 797, in which it was rightly held that, notwithstanding the above words, the *select* Vestry could not make a Church Rate—none but the Parishioners in open Vestry being able to do so.

It is the more necessary thus specially to treat of it because, though one of the most important modes of Parish action, the fact of such action, and its practical importance, are in general entirely overlooked in treatises on this subject.

Besides the general Body to make Bye-Laws or ordinances, and the special Bodies to consider and conduct any matters of a special character, there will always be the necessity for *Officers* to carry out ministerially, into practical detail, the Laws and ordinances made, and to give heed to the ordinary affairs connected with every Local District. Such Officers have, consequently, whether by the name of Provost and four, Constable, Churchwardens, Surveyors, or any other, always formed a part of the practical machinery of the Institution of the *Parish*. The consideration of the mode of appointment, and of the functions, of such officers, will therefore form a distinct part of this work. I will only now, in reference to the fact of this choice of Officers as bearing upon the temper and conduct of the inhabitants generally, quote the very apt remark of one who wrote a century and a half ago. "In a Parish Government, the Churchwardens and Overseers of the Poor [and other officers] are chosen by the inhabitants. And hereby it is that Parish government carries nothing in it uneasy or displeasing to the people. For, naturally, every one is best pleased with his own choice; and hereby both Honours and Burdens are equally borne. And why should I give more trouble than needs must to a Parish Officer, when I know 'twill come to my own turn to bear office, if I have not known the trouble of that already?"*

In order that the several branches of the subjects thus raised may be brought distinctly, and in the most usefully practical shape, before the reader, I propose to treat the matter under two distinct heads. The *first* of these will treat of those *to whom*, in a delegated capacity, the discharge of certain functions attached to the Institution of the Parish is entrusted;—in connection with which topic I shall treat, separately, of Parish Officers, Committees, Trustees of Parish Property, and the position of the Parson or minister. The *second* will treat of *what things* are thus dealt with. After considering these, it will be more convenient to treat, separately, of the rates and taxes by raising which the obligations of the Parish are or may be carried out, by any such authorities, and for any purposes.

* 'The Claims of the People of England Essayed,' 1701, p. 23.

CHAPTER III.

OF PARISH OFFICERS.

SECTION I.

CHURCHWARDENS.

THE accidents of time and fashion, as they change the descriptive names applied to places, so they give at one time to one officer, and at another to another, the chief conventional authority. The *Parish* has been known by the names, perhaps of tything, certainly of vill and town. The Officer of the Parish reckoned to fill the leading position, has at one time been called Provost, at another Constable, Tythingman, Headborough, or Borsholder.* At the present time the Churchwardens have, as the general rule, this conventional precedence. The High Constable, Headborough, or other like officer, is still indeed held, in some places, to be the chief Local Authority. These are now, however, only rare exceptions.†

It is easy to see how the Churchwardens got to be thus the conventionally foremost Parish officers. The church itself was long, and is still in most parishes, the principal building in the parish. In most churches, in Roman Catholic times, there

* The fundamental practical idea of *Adaptation*, as characterizing the Common Law of England, is well expressed in a Judgment of the Court of Common Pleas, in 29 Car. II. (2 Modern Rep. p. 238) ; where, after giving judgment that “the vill and the parish shall be understood to be the same,” (see before, pp. 21, 33, et .)—it is added : “The law hath great regard to the usage and practice of the people :—the law itself being nothing else than common usage, with which it complies, and alters with the exigency of affairs. . . . The *reason* of things changing, the things themselves also change.” Very different, this, from the Bureaucratic and Statutory procrusteanism which has done so much mischief in modern times.

† It is worth noting that, in the Statute of 27 Henry VIII. cap. 25, Churchwardens of parishes are put co-equally with “Mayors, Governors, and head officers of every city, borough, and town corporate.”

were costly goods and ornaments.* Everywhere the due care of the interests of the Parishioners, by maintaining the right and share of the Laity in the church, against either the neglects or encroachments of ecclesiastics, is a work of gravity and trust, needing the best men;—men able to cope, on occasion, with the learning and authority of the minister of the Parish, in maintenance of the rights of the Parishioners; and men independent enough to present, fearlessly, all defaults of the minister himself. It became a natural habit that the principal and most responsible men in every parish should be appointed as “lay guardians,”† on behalf of the whole parish, of the rights and property of the parish in the church, and in maintenance of their independence;—just as, in other bodies having Wardens, the most substantial and trusty men are picked out to fill that office.‡ Thus appointed to a responsible office, other responsibilities, not originally implied in the choice or name, gradually gathered round churchwardens; until the first purpose of their appointment remains only as one, and by no means the most conspicuous, among a number of important local duties.

It is of the highest importance, however, that it should be clearly understood, that Churchwardens never were ecclesiastical officers. It is often attempted, by ecclesiastical writers, to represent and treat them as such. And ecclesiastical encroachments have anxiously sought to reach the office. But both attempts are equally against Law and Common Right. Churchwardens are temporal officers, chosen by the laymen of the parish, to take charge of things of “temporal estate.”§ Before illustrating this point further, it may be remarked that the name “Wardens of the goods” pertaining to the Church, is found in the Rolls of Parliament at least as early as the 15th year of Edw. III. (A.D. 1341),¶ and in the old Year Books, the Records of Cases at Law, at least as early as A.D. 1410.** The name was then, however, rather descriptive, than a regular title of Office. The name “Sworn Men” long prevailed as matter of title. In the *Inquisitiones Nonarum*, all the men named as

* See after, Chap. VII. Sec. 12.

† Kennett, p. 647.

‡ In an old case, the Wardens of the Parish Church are compared to the Wardens of the Goldsmiths' Company. Year Books, 19 Hen. VI. fo. 66.

§ Year Books, 37 Hen. VI. fo. 30.

¶ No. 23.

** Year Books, 11 Hen. IV. fo. 12. Chaucer speaks (?) of “Church-Reeves.”

acting for the Parishes are called “sworn men;” which has been also seen to have been the expression used in the old Rolls of Parliament. The same records inform us that they were “chosen by the commonalty of the Parish, and sworn before” civil, not ecclesiastical, authorities. The persons thus described were, however, a special Committee of the Parish, not those annual Officers now called Churchwardens. But an expression is found in a Statute of James I.,* which clearly shows that the name “sworn men” was still at that time in use, although probably then becoming obsolete, to express the same office as that of Churchwarden. “All churchwardens, and *all persons, called sworn men*, executing of the office of Churchwardens,” are there named, together with Headboroughs, Portreves, Constables, and Tythingmen. In Laud’s Canons, even, the phrase is used,—“Churchwardens and other *sworn men*.”

As *Sidesmen* are often mentioned together with Churchwardens, this is the proper place to remark that a part of what has, more lately, been reckoned as one duty of the churchwardens,—the making of presentments—was formerly that of the Sidesmen only. The authority of Bishop Gibson cannot be considered as other than conclusive on such a point. He tells us that,—so far as they had to do with the church,—“Churchwardens were, by their original office, only to take care of the Goods, Repairs, and Ornaments, of the church; for which purposes they have been reputed a Body Corporate for many hundred years, as appears by the ancient register of Writs. But the business of presenting was devolved upon them by Canons and Constitutions of a more modern date. The ancient method was, not only for the clergy, but *the body of the people*† within such a district, to appear at Synods, or, as we now call them, General Visitations (for what we now call *Visitations* were really the annual Synods). And the way was, to select a certain number, to give information upon oath concerning the manners of the people [and the parson]. But afterwards, when

* 21 Jac. I. c. 12, s. 3.

† See before, Chap. I. p. 32. Here, again, the reader will note one of the monstrous encroachments attempted by the Canons (90);—which would make the Sidesmen, instead of being either the Body of the People or some selected by them, to be appointed “*by the Minister and Parishioners*, if they can agree; otherwise by the Ordinary”!

the Body of the people began to be excused [!] from attendance, it was directed that four, six, or eight, should appear, together with the clergy, to represent the rest, and to be the *testes synodales*," that is, *synodsmen*. "And this," says he, "is evidently the Original of that Office which our Canons call the office of *Sidesmen*, or assistants,"*—sometimes "Questmen."

This passage, which proves how ecclesiastical encroachments have gradually *excluded* the lay part of the church, under the polite phraseology of its being "excused" from its due and equal part in all church matters (thereby increasing, however, the responsibility of the office of Churchwarden), brings us back to the secular character of the Churchwardens themselves,—a point which it is desirable to show to be free from any doubt whatever.

Lord Coke lays it down that "the office is merely temporal."† "Parishes were instituted," says Chief Justice Holt, "for the ease and benefit of the people, and not of the parson."‡ "The Churchwardens be officers put in trust for the behoof of their Parish;" says Lambard: "therefore, also, are they not enabled with any other power than for the good and profit of the Parish."§ "They are chosen churchwardens *by the temporal estates*," are the words of the old Year Books.|| "The Churchwarden is an Officer of the Parish, and his misbehaviour will prejudice them, and not the Archdeacon. It is an office *merely temporal*."¶ "The Churchwarden is a *temporal officer*. He has the property and custody of the Parish goods; and as it is at the peril of the Parishioners, so they may choose and trust whom they think fit; and the archdeacon has no power to elect, or control their election."** "Though the churchwardens are unfit, the archdeacon cannot refuse them."†† "The Parish Officers are officers of the parish, and not of the patron."‡‡

Neither patron, parson, nor ecclesiastical authority of any sort, has, then, anything to do with the churchwardens. The latter are officers of the Parish, chosen by the Parish, to take care of its properties, and otherwise to give heed to its interests.

This leads to another important point. One of the most

* Gibson on Visitations (1717), pp. 59, 60, 61.

† 13 Reports, p. 70.

‡ 3 Salkeld's Reports, p. 88.

§ Duties of Constables, etc., p. 72.

|| 37 Hen. VI. fo. 30.

¶ Chief Justice Holt: Lord Raymond's Reports, p. 138.

** 1 Salkeld's Reports, p. 166. See, further, quotations on pp. 90, 91.

†† 3 Salkeld, p. 90.

‡‡ Strange's Reports, p. 715.

daring and insidious of ecclesiastical encroachments, has been the attempt to interfere with the election of churchwardens, and to take the election of one of them out of the hands of the "temporal estate," and make the office the donative of the parson. This attempt was made by certain ecclesiastical Canons adopted by Convocation in 1603. It is not even pretended that the assumption of such interference can be rested on any other authority. Later cases and decisions on this matter,—which have weakly and timidly followed one another, without any of them looking into the foundations of the question,—are no authority at all. Such cases cannot *make* the Law.* It is certain that the Law is wrongly stated in them.

To make this point clear, it is necessary, first, to show that the Canons themselves have no force whatever, *so far as the Laity are concerned*. They can neither override nor modify the Common Law of the land.

In order to sustain the authority of the Canons, as binding the Laity, ecclesiastical writers are obliged to have recourse to jesuitical modes of statement and reasoning, the use of which is itself a proof of the conscious weakness of the ground. Stillingfleet may be taken as a favourable specimen of both the learning and candour of ecclesiastical writers. Writing on this special topic, he admits that the power of making Canons is founded, and entirely rests, on the Statute 25 Henry VIII. cap. 19: but he seeks to make out that new Laws may be introduced by such Canons; and to explain away, not to say misinterpret, certain expressions of Lord Coke upon the subject. In order to make show of reason in this argument, he is obliged however, to omit all mention of the most important clause in the Statute of Henry VIII., and to mis-state, or leave unnoticed, the emphatically recorded opinions of Lord Coke himself.†

The Statute 25 Henry VIII. cap. 19, expressly recites that Constitutions and Canons had, theretofore, been enacted, which were "repugnant to the Laws and Statutes of this Realm;"—thus showing that encroachments had been already attempted by this means, which needed checking. What the Statute goes on to do, is, to enact that no Constitutions or Canons shall, in future, ever be presumed to be enacted or promulgated with-

* See before, pp. 13, 14.

† See Stillingfleet's *Ecclesiastical Cases*, pp. 362, 363.

out the king's license. But the license to promulgate does not, nor was it intended by that Statute that it should, go one step towards enabling a new Law to be made by any Canon. On the contrary, the statute itself contains the following careful clause,—which entirely demolishes all the arguments of Bishop Stillingfleet, and those of every other writer, and every adjudication grounded on such a canon. “Provided always, that *no Canons, Constitutions, or ordinance, shall be made or put in execution within this realm, by authority of the Convocation of the clergy, which shall be contrariant or repugnant to the king's prerogative royal, or the customs, Laws, or Statutes of this Realm.*”^{*} And the Act of 13 Charles II. (Statute I.) chapter 12, expressly declares, that nothing therein contained shall be construed to “confirm the canons made in the year 1640, nor any of them, *nor any other ecclesiastical Laws or Canons not formally confirmed, allowed, or enacted by Parliament, or by the established Laws of the Land as they stood in the year of our Lord 1639.*” Yet very learned judges have spoken of Laud's Canons (1640) as if they were not aware whether they had been recognized! It has been already shown,[†] that those Canons were expressly declared altogether illegal by vote of Parliament. The above-named Act again declares them illegal by Statute! On the other hand, the Canons of 1603 have never been “confirmed, allowed, or enacted by Parliament.” Nothing can more strongly prove the necessity, in order to understand these questions rightly, of going to the fountain heads.

Lord Coke is far indeed from being able to be honestly quoted to give, either directly or by implication, any colour to the doctrine that Canons can, under any circumstances, either alter or modify the Law, as regards the Laity. This high authority lays down precisely the contrary, more than once, in the most emphatic terms. “All Canons,” says he, “against the Laws or Customs of the Realm are void and of none effect.”[‡] And another passage is even still stronger. It occurs in a case where a parson sought to set up a power, *by virtue of the very Canons in question*, those of 1603, to defeat the common right of Parishioners to choose their own officers. “The parson of the parish,” says Lord Coke, “*by colour of a new canon, made at the convocation in the second year of the king [James I.] that now is,*

^{*} See, further, 27 Hen. VIII. c. 15, and 35 Hen. VIII. c. 16.

[†] Chap. I. p. 32.

[‡] Fourth Institute, p. 309.

(*which is not of force to take away any custom,*) drew the clerk before the official of the archbishop, to deprive him, *upon the point of the right of election*. And a prohibition was granted by the whole court ;—because the party chosen is a mere temporal man, and *the means of choosing him*, namely the custom, *is mere temporal* ; so the official cannot deprive him. But, upon occasion, the *parishioners* might displace him. And this office is *like to the office of a Churchwarden*.”* In yet another place, where the Canons had also been quoted, Lord Coke says :—“ No statute or custom of the realm can be taken away or abrogated by any canon.”† Elsewhere he records that “ many ministers have grown of late more troublesome to their parishioners ;” and how necessary it is, “ for the temporal courts always to have an eye that the ecclesiastical jurisdiction usurp not upon the temporal.”‡ And the same great master of the Law was so little disposed to be drawn into any appearance of admitting the authority of the Canons, that, even in a case where the Canon Law seemed to embody a correct rule, he very wisely and carefully declared that he “ did not rely upon *that*, but upon the grounds aforesaid ; namely, the Common Law, Statute laws, and the continual and infinite judgments and judicial proceedings : and that, *if any canon or constitution be against the same*, such canon and constitution is void, by the Statute of 25 Henry VIII. cap. 19 ; for all canons, constitutions, etc. against the prerogative of the King, the Common Law, Statutes, or Customs of the realm, are void.”§

One of the ablest among a highly valuable class of contributors to our national history and most interesting literature, the County Historians,—one who was himself an able Lawyer, as well as a learned Historian,—incidentally but excellently remarks, in connection with this subject :—“ The Canon made in 1 Jac. I. cannot restrain their right : for, though a convocation hath power to make constitutions for ecclesiastical things or persons, yet they ought to be according to the Law and Custom of the Realm ; and the Canon shall be intended [*i. e.* considered only to apply] *where the parson had the nomination of a churchwarden before the making of the Canon*. And if the Archdeacon shall refuse to swear the Churchwardens chosen by the majority of the Parishioners according to their custom, upon a

* 13 Coke’s Reports, p. 70.

† 13 Reports, p. 17.

‡ Second Institute, pp. 610, 615.

§ 13 Reports, p. 47.

motion in the Court of King's Bench, the court will grant a writ directed to the archdeacon, commanding him to swear them; *otherwise the Clergy would have a power of disposing of the Rights of the Subject* in their convocation, which cannot be without Act of Parliament."*

It cannot be necessary to cite any more authorities on this point. "You need not cite cases," said Lord Chief Justice Hardwicke: "that point is very settled: that canon cannot control" the unquestionable rule of Law that, "of common right, the choice of churchwardens is in the parishioners, and, if the incumbent chooses one in any place, it is but by usage."† Canons and Constitutions, if made by a Convocation lawfully summoned, and afterwards duly allowed, undoubtedly bind *ecclesiastics*; but they are of no force whatever as regards the laity.‡

"A custom existing beyond the time of legal memory, and extending over the whole realm, is no other than the Common Law of England."§ It will always be difficult, often impossible, to prove the true ancient custom in individual places. But it is quite clear, from the first principles of Law and Logic, that, as no Canon is of any force whatever in itself, in relation to the Laity, it lies upon those who would set up the rule named in any canon, as the Law, to prove that the *custom*, the *Common Law*, dating from *before the time* of the Canon in question,|| is in accordance with what is put forth in the Canon. It has been seen that this very point is emphatically stated by Lord Coke. The only "custom" that "the whole court" thought it

* Chauncy's History of Hertfordshire, vol. i., Hundred of Edwinstere;—parish of Anstie. See before, pp. 33, 50.

† Cases temp. Hardwicke, p. 275. The words in the first clause are his own; the latter clause is what is admitted by the Court to be a correct statement of the Law by the counsel in the cause.

‡ See Stillingfleet's Ecclesiastical Cases, 372. The two speeches of Sir Edward Dering and of Sir N. Fiennes, on Monday, 14th of December, 1640 (4 Rushworth's Historical Collections, pp. 100, 105, and also printed separately in the quarto tracts of the day), are well worthy the attentive perusal of every one who desires to understand the powers of Convocations and Synods, and the true meaning of "the universal church." Those speeches are equally learned, constitutional, and eloquent. See them quoted before, Chap. I. p. 32.

§ Chief Justice Tyndal; judgment in the Exchequer Chamber on the Braintree Case. See an illustration of this, before, p. 49.

|| See before, p. 74, and after, pp. 77 and 82.

necessary to regard, was, that it is a "*temporal*" office; which fact was held at once to take it out of any connection with, or operation on by, any Canon. And so I might be content to leave the question now, as to Churchwardens, but for the fact that in some later cases,—owing, it must be presumed, to the fact of the whole question not having been investigated,—a different rule has been attempted to be set up; and the illogical doctrine,—unquestionably not the Law,—has been put forth, that the custom must be proved by the Parish as against the Canon; which latter is otherwise to be taken as a guide,—in direct contradiction to what is laid down by Lord Coke.* It is by encroachments such as these, never submitted to in the time of our ancestors, that the fundamental Institutions of England are being gradually undermined, and that the church itself, instead of being really strengthened, justly loses its hold on the respect and affections of men. But, such an extraordinary doctrine having been put forth, and eagerly copied and paraded by ecclesiastical writers, it is desirable to add to the legal and logical proof already given, some evidence as to what the general custom, extending over the whole realm,—“that is the common Law of England,”—on this matter, actually has been, and therefore what the Law actually is. This will be found to be directly the reverse of what the Canon seeks to enforce. On the double ground therefore,—of *principle*, as put by Lord Coke, inasmuch as churchwardens are *temporal* officers and of *special fact* as to the actual mode of the election of those officers,—it will be clear that Canon 89, which pretends to regulate the election of Churchwardens, and to give the minister of the church the donative right as to one churchwarden, leaving the elective right as to one only in the hands of the whole body of the Parish, is altogether illegal, void, and of non effect.

It is sometimes pretended to be set up that several adjudged cases refer to London Parishes, which latter may have a special custom; and therefore that such cases do not contradict the Canon. The insinuation is untrue as matter of fact. On the other hand, the inhabitants of a city were simply more likely to maintain their rights against encroachment, while in country places there would always be a naturally greater tendency to listen to any suggestion made by the Minister, and less oppor-

* Before, p. 74, and after, p. 82.

tunity to know the real force of the Canon and bearing of the Law.* To set this up as against the right, is simply saying that advantage is to be taken of a deliberate wrong. "The Canon says, the Minister shall choose one. That is only," expressly says Lord Chief Justice Holt, "by custom, *where they have so done*. And the Canon only confirms that ancient usage, which was at first by some composition,"†—originating in the way above suggested. And this, says the same distinguished Judge in another place, "is rather by custom than the Common Law;"‡ thus clearly intimating his own opinion of the irregularity and impropriety of such a course.

Even as to the Country Parishes, however, there is no pretence for the allegation as to the existence of any such general custom. The entire facts, and all the necessary inferences from facts, are, indeed, against any such assumption.

That the office and choice of Churchwardens are temporal matters, and so not to be interfered with by any Canon, Coke has already told us. But the records show that it has always been held that the Churchwardens may, and are under given circumstances bound, to sue the parson himself on behalf of the Parish.§ This is really a *reductio ad absurdum* of the argument. For it is preposterous to suppose that a man is, as an individual, to have the appointment of the person to whom he is himself, as an individual, responsible. And this point becomes the more clear, when it is remembered that the churchwardens have annually to give written answers to articles of Inquiry, whether the parson has fulfilled his duties to the parishioners. This is a fit duty for the representatives of the Parish: it is simply ridiculous if entrusted to the creature of the parson himself.

The very things that Churchwardens have to keep, in connection with the Church, are emphatically and uniformly declared to belong to the *Parish*, and to it only, and not to the parson. This fact, again, makes the idea of the parson appoint-

* In modern times, as well as thus in older, encroachments are often deliberately attempted by those in office, on the reckoning that those they affect will be unable to undergo the risk, cost, and hardship of a contest at Law about them. See 'Local Self-Government,' p. 186.

† 12 Modern Reports, p. 116.

‡ Raymond's Reports, p. 138.

§ See Year Books, 11 Hen. IV. fo. 12. Later cases might be quoted: but this is purposely cited, to show how firmly established the principle has always been.

ing one of them an inconsistency. In legal proceedings taken by the churchwardens, they are obliged always to state that the loss, damage, or breach complained of is "*to the injury of the Parishioners.*" It has even been laid down, by a distinguished judge (Lord Macclesfield), that the churchwardens are themselves improperly called a corporation: "for all the parishioners are the body, and the churchwardens are only a name to sue in personal actions; but the property is in the Parishioners.* And [therefore] in all actions brought by churchwardens it must be laid *ad damnum Parochianorum.*"† It is clearly necessary that those who are thus to sue shall be those in whom the *Parishioners* can place implicit confidence, through the identity of their interests.

In the old cases,—*not one of which, be it observed, contains a hint at the parson's having a voice in the choice of any churchwarden, (much less at the making an entire donative of the Office of one of them) but precisely the reverse,*—BOTH the Wardens are *invariably treated and spoken of as elected* by the whole body of the parish. The parson is never named, unless there is an action against him by the Churchwardens. "*They are persons* [plural] *chosen* to have the management of, and to expend, what things come into their hands; and of which they have to give an account." "The charge is committed to the Wardens as to the church, and as to the goods and other profits which belong to the parishioners."‡ "The property is always in the parish; to be dealt with by *those* [plural] who are *chosen* churchwardens BY THE TEMPORAL ESTATES."§ This statement of the Law and the Fact is conclusive.

In every case, the election and the responsibility of *both* are distinctly stated to rest with the Body of the parishioners, and them only. No one dreamed, in those days, of this unconstitutional and illegal attempt of the church to interfere in, and practically nullify, the election of temporal officers. Had it been attempted, it would certainly have met with the rebuke which an analogous attempt did meet with at a later time, and which applies precisely to this case. "There might," says

* See this point at the close of this Chapter, pp. 101, 102.

† Viner's Abridgment, vol. iv. p. 525, from a MS. Case. See Year Books, 8 Ed. IV. fo. 6; Cro. Eliz. 179; 1 Modern Reports, 65. A multitude of similar cases might be cited.

‡ Year Books, 12 Hen. VII. fo. 28.

§ *Ib.*, 37 Hen. VI. fo. 30.

Lord Hardwicke,* in answer to a pretence of “inconvenience” if the voice of the Parish were to be the test, “be an inconvenience to say such power is lodged in the vicar; for he might make use of it to influence which churchwarden he thought fit, against the sense of the majority of the parishioners.”

But beyond these clear and unanswerable proofs, it can be shown, even from an unimpeachable witness on the ecclesiastical side, that the Canon of 1603 as to Churchwardens was an entire novelty. That witness is, the Canons made by the same Body of ecclesiastics, thirty-two years earlier. The comparison of the Canons of 1571 with those of 1603, on this point, gives an instructive illustration of the progress of ecclesiastical usurpation, while it leaves ecclesiastical writers without the possibility of a pretext for alleging the existence of any *custom* that the Parson usually nominated one Churchwarden before and at the time of the Canons of 1603. The words of the Canon of 1571 are as follow:—“Churchwardens, according to the custom of their parish,† shall be chosen *by the Votes of their Parishioners and Minister: otherwise, they shall not be churchwardens*: nor shall they remain in that office more than one year, unless they shall be again elected.”‡ Observe how, while the same general form of words is retained, a startling interpolation is introduced in the Canon of 1603, which runs as follows:—“All Churchwardens and questmen in every parish shall be chosen by the *joint* consent of the minister and the parishioners, *if it may be. But if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another*: and without such a *joint or several* choice, none shall take upon them to be churchwardens;—neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner.”§ Besides the transposition of the Minister’s place, which is significant,—precedence being here given to him before the Parishioners,—the words in

* Cases in the time of Lord Hardwicke, p. 276. Compare with the language of Chauncy, quoted before, p. 74.

† See the meaning of these words explained by Lord Hale, after, p. 82.

‡ Sparrow’s Canons, p. 234. The words of the original are:—“Æditui, pro consuetudine suæ quique Parochiæ, parochianorum suorum, et ecclesiastici sui ministri, suffragiis eligentur: alioqui æditui non erunt: nec amplius quam unum annum durabunt in illo munere, nisi forte iterum eligantur.” See 27 Hen. VIII. c. 25, s. 23, as to the annual election of Churchwardens.

§ 89th Canon.

italics in this later Canon are an entire interpolation, which altogether departs from the sense of the Canon of 1571. The meaning of the latter Canon is, that the Minister should have a Vote as one among the Votes of the Parishioners,—which, be it observed, was itself an encroachment,*—but that *no one could* act as churchwarden by mere nomination, nor *unless* freely elected to that office upon and by these suffrages. The Canon of 1603 wholly inverts the process. The minister is no longer to be content with having a vote among the rest of the elective body, but his single voice is sought to be made of equal account with that of all the Parishioners put together! Thus rapidly do ecclesiastical usurpations extend themselves. The Canon of 1571 was itself an innovation: but that of 1603 was the bold grasp of daring usurpation. The comparison of the two affords clear and valuable demonstration of the novelty of the latter, and of its being “contrariant and repugnant to the Laws and customs of the realm.” It thus comes clearly within the terms of the Statutes of Henry VIII. and Charles II. already quoted, and stands proved, by its own terms, to be illegal and void. At the same time, the comparison of these two Canons, between the dates of which only thirty-two years had elapsed, gives a practical illustration of Lord Coke’s observation, made nearly at the date of the later Canon, that “many ministers have grown of late more troublesome to their parishioners;”† to which the remark of Lord Clarendon gives forcible confirmation, when, speaking of the time just following the Canons of 1603, he says that “the inferior clergy took more upon them than they were wont, and did not live towards their neighbours of quality, or their patrons themselves, with that civility and condescension they had used to do.”‡

* The fact that the Parson or Minister has not at Common Law, and formerly never had in practice, any part in the election of Churchwardens or other Parish Officers, is unquestionable. It is abundantly proved by the various extracts given in the text (and see before, p. 71 and 78). But as I have shown, above, the gradually increasing usurpations of one set of Canons by comparing them with an earlier one, so it may be shown, by going still earlier than these canons of 1571, that the Parson had no Voice in the choice of Churchwardens. The “Injunctions” of Edw. VI. (A.D. 1547) and of Elizabeth speak of the keys of the Chest being kept by “the churchwardens, or any other two honest men, to be appointed by *the parish* from year to year” (Sparrow’s Canons, pp. 9, 74). See also, from Kennett, after, p. 86, *note*.

† Second Institute, p. 610.

‡ History, Book I. See further, after, p. 85 and *note*.

Whatever may have been done in any parish since 1603, through a mistaken notion of the force of the Canon, cannot be treated as in the slightest degree evidence of a custom. It has been already seen that any custom, to be lawful, must have a "legal commencement."* But the commencement of this practice was in an illegal canon.† As to the "Common Right," which that Canon clearly violates, there cannot be even a question. Thus any such alleged custom is now plainly void.

It may be here remarked that, through the whole of the very important records called *Inquisitiones Nonarum*, there is not a word to indicate, but, on every page, that which conclusively negatives, the presumption, that the Minister ever had any right or legal power whatever to interfere, in any way, (even by having a single vote as a Parishioner,) with the election of the "sworn men" or churchwardens, or with any of their functions. This ecclesiastical encroachment can, indeed, find no countenance in any of those records to which alone we must look for authority on the Common Law. Even the elder books of churchmen themselves are against it. Ayliffe distinctly admits, both directly and impliedly, that the choice of both the churchwardens belongs to the Parish, and that the Canon of 1603 is the only pretext for a contrary practice.‡ This is a distinct and unevadible acknowledgment that such Canon is "contrariant and repugnant" to the Common Law and earlier custom.

Chief Justice Holt declares that, "Of *Common Right*, the choosing Churchwardens belongs to the Parishioners. 'Tis true, in some places the incumbent chooses one, but that is only by usage; and *the canon concerning the choosing churchwardens is not regarded by the Common Law*. This was the opinion of the Lord Chief Baron Hale."§ The language of Chief Baron Hale himself is this:—"There are at least thirty precedents to the contrary [of the election being according to ecclesiastical Canons]. And for reasons:—first: Churchwardens are *lay incorporations*. Of *Common Right*, every parish ought to choose their *own* churchwardens. But, because the

* Before, p. 48, *note*.

† See further, p. 85 and *note*.

‡ Parergon, pp. 171, 358. He states, also, the power of removal and re-choice by the Parishioners. See p. 171.

§ Carthew's Reports, p. 118. And see before, p. 77.

*manner of election** varies and is uncertain, a custom may be alleged. And issue may be taken whether a *special and select vestry*, or the *whole parish*, ought to choose these churchwardens: and *that* would be a proper issue."† The point whether the parson has any hand in the election, much less has the entire donative of the office of one who is to be appointed, is not even entertained by this learned judge. He distinctly declares that the only question capable of being raised as a proper issue is,—whether the choice lie in a *Select Vestry* or in the *whole Body* of the Parishioners. It is remarkable that Lord Coke specifically says:—"It would be very mischievous if the parson should elect whom he please to be churchwarden.‡ A convocation hath power to make constitutions for ecclesiastical things or persons. But they ought to be according to the law and custom of the Realm. And they cannot make churchwardens, that were *elective*, to be *donative*, without Act of Parliament: and the Canon is to be intended where the parson had the nomination of a churchwarden *before the making of the Canon*."§ The onus of proof is thus clearly thrown, in each case, on those who would in any place sustain the practice according to the rule of the Canon, to establish that such was the practice in that parish *before* the Canon. It must not be forgotten that while, often, in things in themselves indifferent, a "lawful commencement" will be presumed,|| this case is not a matter indifferent. The alleged custom is declared by the highest authority to be contrary to common right and to the common Law. Such a

* See the "pro consuetudine suæ quique parochiæ" of the canon of 1571, as above quoted, p. 79.

† Hardres' Reports, p. 378.

‡ So the Court said in another case:—"If every parson might have election of one churchwarden, without the assent of the parishioners, they might be much prejudiced." Warner's Case, Cro. Jac. 532. Such remarks, then made, are entirely *conclusive* that no such custom existed before the canon, but that the usurpation was being then sedulously attempted under colour of it. See after, p. 85, *note*.

§ Noy's Reports, p. 139. In the case of *Hubbard v. Penrice*, Strange's Reports, p. 1246, neither the Principle nor the Authorities were investigated. The above judgments prove that the dictum of the single judge in that case is untrue as matter of fact. The peculiar weight of those judgments lies in their nearness to the time of the Canon itself, showing, *first*, that, as a matter of fact, no such *custom* did then exist in any common sense; and, *second*, that the practice was regarded, by all the greatest Lawyers, as contrary at once to Law, to common right, and to sound policy.

|| See an example, before, p. 42.

practice in any place is, therefore, necessarily tainted with suspicion of an unlawful commencement, through the fact of the novelty of the Canon. Nothing can be *inferred* in such a case; but the entire onus lies on those seeking to sustain such a custom, to prove that it was a lawful custom *before* the time of the Canon of 1603. Any decision or holding contrary to this is so clearly *not Law*, that, after the authorities cited above, it can be unnecessary to add further illustration or argument.

It must next be remarked, that it is unquestionably in the power of the parish to remove both or either of the Churchwardens at any time during their term of office. But it is self-evident that the existence of this power entirely negatives, from the necessity of the case, any pretensions of the minister to intermeddle in any way with the choice of either of the Churchwardens. It renders the allegation of his power to nominate one of them, and the attempt of this Canon to turn the office into a donative, a palpable absurdity.* A few authorities on this point, out of the great number that might be quoted, will be enough. Each one of these is, however, conclusive and direct. And it must be remarked that there is no authority even suggesting that the parson has such power of removing either; while not even the Canon itself, on the other hand, allows the parson to take part in the choice of churchwardens except in Easter week. It is perfectly certain that the Parishioners can, *at any time*, remove either or both, and choose fresh ones in place of both,—or more, if there are more than two.

“It was agreed, by all the judges, that, if a parish chooses every year two men to be wardens of their church; or the custom is for those elected to be wardens for two years; yet *the parish* may, at any time, within the two years, remove such wardens so chosen, and make new ones. For, if the wardens should waste the goods of the church, it would be a great inconvenience if *the parishioners* could not remove them. So might the goods be all wasted before the end of the two years. Wherefore *the parish* can at any time remove them.”†

* In their anxiety to usurp power, the authors of the Canons of 1603 forgot the right of the Parishioners to dismiss Churchwardens. The Canon (90) names Easter week for the choice of Churchwardens. Whatever force any ecclesiastic may, therefore, claim for the Canons, he is bound, by those Canons themselves, not to take part in any election at any other time than in Easter week. The Parishioners may elect at any time.

† Year Books, 26 Hen. VIII. fo. 5. See before, pp. 78, 79.

“Forasmuch,” says Lambard, “as these churchwardens be officers *put in trust for the behoof of their parish*,* therefore also are they not enabled with any other power, than for the good and profit of *the parish*. So that Churchwardens can neither give away, nor release, at their own pleasure, the goods of the Church. For if *the Parishioners* shall find that they do unprofitably waste or mis-spend the goods of the Parish, then may they remove such churchwardens, by *making their choice of new*: which new officers may call to account the former churchwardens, and shall thereby compel them, both to give reckoning of their doings during their office, and also to make satisfaction to the use of the parish for the harm it hath received by their fault. And although the usage and custom of the Parish be, that the churchwardens there shall continue in their office, by the space of one whole year, or two years or more (as indeed some Parishes have such customs), yet, upon such or the like misdemeanour found in them, may the parishioners at all times proceed to an election of new Churchwardens, and may remove the old; for that otherwise they have no mean by our law to call them to their account, but by such as shall be put in their place. Nevertheless, those former churchwardens shall (upon the making of such their account) have allowance of all needful sums of money, or other things, which they have expended, either upon the reparation of the body of the church, or for the provision of meet and lawful ornaments, or other furniture of the Church or Parish; . . . and of whatsoever thing that they are by law chargeable to do.”†

The whole of this passage clearly proves that everything relating to the election, duties, dismissal, or otherwise, of the Churchwardens, is an affair with which the parishioners, and they only, have to do; and that, if one set is dismissed, the parishioners, and they only, (which indeed must be self-evident, if the power is a reality) are to elect the new ones. This is a point, indeed, which happens to be expressly declared in one of those old cases which record that Common Law which the Canons would violate. “*The parishioners have the right to elect others as wardens*; who shall have an action of account”‡ against the displaced Churchwardens.

* These italics are so in the original.

† Lambard's ‘Duties of constables, borsholders, tythingmen, etc.,’ p. 72.

‡ Year Books, 8 Edw. IV. fo. 6.

Lord Coke also very plainly states this in a case already quoted. Speaking of another parish office, he says:—"This office is like to the office of a Church-warden; who, although they be chosen for two years, yet, for cause, they (*the parishioners*) may displace them."* He is peculiarly careful, in this passage, to show, by the words in parenthesis, that it is "the parishioners," and not the parson, who have the power of displacement. The point of this mode of putting it is strengthened by the fact, that the case itself arose on the attempt of the Parson of a Parish to displace the officer whose office is thus expressly declared to be "like to the office of a church-warden," on the strength of the very Canons which thus attempt to interfere, also, with the Common Right as to choice of Churchwardens.†

It would, however, be difficult to wish for more conclusive proof of the facts that the Canon of 1603 was a very deliberate attempt at usurpation, and that it was contrary to the custom and Common Law, and was only enforced on any Parishes with great difficulty and by unfair and illegal means, than is given us by Bishop Gibson.‡ He quotes the Register of the Convocation of 1640,—thirty-seven years after this "new Canon" had been published; and during all which time the clergy had been doing their best to enforce it on Parishes, under pretence that it was binding as Law, and obligatory.§ Yet it appears that the clergy then complained to the Convocation that the

* 13 Reports, p. 70.

† See before, pp. 73, 74.

‡ Codex, p. 214, *note*.

§ This is not conjectural. The cases above quoted prove it. And the pertinacity of these illegal attempts,—notwithstanding defeat after defeat,—is strikingly shown by the number of cases on the point in the old books; in all which the parson's attempt is stated to be made "by colour of the late canons," or "under pretence of a new canon." (See before, pp. 73, 82 *notes*). The number of such cases recorded is, of course, a very small proportion of what were actually contested. And those contested were, equally of course, but a small proportion of those in which the illegal usurpation was actually made,—and submitted to, in ignorance, on the assertion of the parson that the Canon was obligatory. (See before, bottom of p. 76.) Hence, alone, the submission, now, to this illegal Canon in so many places; which submission, however, does not make the practice, or the *donative* Churchwarden, any the more lawful. The long submission to an unlawful usurpation cannot make it into a lawful custom. This is not a case where the "reason of the thing has changed" (see p. 68, *note*). On the contrary, the "reason of the thing" now makes the usurpation the more preposterous than ever. See after, Chap. VI.

laity would choose Churchwardens who opposed and disquieted them ; that is, who would not let them have their own way in making encroachments. And Gibson is incautious enough to lament that Churchwardens should ever be in “an *independent** state;”—the precise position and character which it is essential to the interests and welfare of every parish that they always should maintain.

Added to all this, is the unquestionable fact, proved by actual examination, that old Minute Books of Parishes themselves prove the practice, before the Canon, to have been for the Parishioners to choose both churchwardens, in the very places where now the Minister has unlawfully assumed the nomination of one.†

The sum of the whole matter is simple, but conclusive. No convocation can make any Canons to alter the Law. Every Canon “contrariant or repugnant” to the Law or to custom is in itself absolutely void. Churchwardens are temporal officers; and the election of them is a temporal matter; with which no ecclesiastical authority can therefore intermeddle. If the Canon be good, it can only be good by its being shown that, *before* that Canon, the custom and Common Law were the same as the Canon. Such custom and Common Law can alone be the warrant,—not the Canon. Resting the case on the Canon, implies, in itself, the admission that an *alteration* of the Law was made by that Canon; which it has been proved would be *ipso facto* void. But the entire evidence proves that not only did the custom not agree with the Canon, but that it was precisely the reverse, the Canon being an entire novelty. The proof, both direct and by necessary inference,—by reference both to Principle and to Fact,—as well as by the *reductio ab absurdum* itself, is uniform. It puts it beyond question that to the parishioners, and to the parishioners alone, belongs, by the Common Law of England, in every Parish in England, unless where a contrary custom prior to 1603 can be proved,‡ the election

* His own italic.

† So, in Kennet, p. 616, Bishop, Patron, and Vicar, all recognize, as a matter of course, the fact that “*Parochiani, inter eosdem, Yconomos eligant.*”

‡ And even in any such case, there can be no real (however difficult it may be to establish a *legal*) question that it grew by encroachment, and was in itself illegal. But the power of removal above stated, which unquestionably exists in *every* parish, will prevent any ill consequences, even can the existence of such a prior custom be anywhere proved.

of both, or all (if more than two), of its churchwardens. No submission to the fancied force of the canon in any parish, for any length of time, and no dictum of any Court of Law on any subsequent case, can alter this as being the unquestionable Law of England at the present time, on the matter of the Election of Churchwardens.

This is a subject of vast practical importance. That importance cannot indeed be exaggerated, inasmuch as, in the great majority of places, the Churchwardens are the only constituted Head Officers, and the Parish Vestry is the only Municipal Body. Attempts are making, now, to fasten the ecclesiastical yoke more and more upon the people. In the year 1852 the Bishop of London got a Bill introduced into the House of Lords, under the name of "Churchwardens' Elections Bill," the object of which was, to subvert all the independence of Vestries and Churchwardens, and to deliver both, bound hand and foot, into the hands of the Minister. The Bill was stopped, solely through the vigorous efforts made by several Parishes. But the fact of the attempt having been made, proves what is being aimed at, and what will be again attempted, unless an intelligent public spirit watches and prevents it.*

* It will be permanently useful to preserve here some extracts from the document, widely circulated at the time, which was chiefly instrumental in defeating this Bill. The following will show the general purpose and tendency of the Bill itself; and the considerations connected with it.

"By the *first* Section, it is declared that 'the present mode of electing Churchwardens is attended with *inconvenience*, and it is expedient to alter the same.'

"It is the *Right* of the parishioners that is '*inconvenient*' to the parsons; not the *Practice* to the parishioners. The vague generality of this preamble indicates only that the independence that vestries now have and exercise, is displeasing to ecclesiastics, who therefore desire to bring it about that such independence shall 'by little and little vanish.'¹

"Sections 2 and 3 enact that all churchwardens shall be elected or appointed yearly in Easter week; and that the office shall continue until the Easter following.

"This will effect an entire and most serious innovation on the rights of vestries, and on the whole principle of the responsibility of elective officers. The following quotations will best show this:—

"'It was resolved by all the judges that,² if two churchwardens are chosen for a term, as of two years, nevertheless the parishioners may, *at any time during the two years*, remove those wardens and choose new

¹ 2 Inst. p. 540.

² Year Book, 26 Hen. VIII. fo. 5.

The usual number of churchwardens is two. In some (but not all) parishes, divided into townships, each township elects one, or even two; and so there are three, four, or five, or more, to the whole parish. Each, however, though acting specially for his township, is churchwarden of the whole Parish. In some cases of undivided parishes there are three; while in

ones. *For, if the wardens should waste the property, it would be great inconvenience if the parish could not remove them.* Mark the 'inconvenience' here, again, so constitutionally made the ground of the judgment.

"The *fifth* Section enacts that the Parson (whether rector, vicar, or curate), or his deputy by himself appointed (!) shall be 'Chairman.'

"The word 'chairman' here is ingeniously delusive. At Common Law there is an open meeting, with a chairman. This Bill enacts that darkness shall take the place of light,—supersedes the always hitherto accustomed public open Vestry meeting by the parson's closet. Open public meeting, with opportunity of question, is essential to at least the initiative of every true election of any public Officer or Representative. One main object of this Bill is to suppress the *habit* (always 'inconvenient' to the enemies of the Common Right and General Liberty), and so the right and practice, of *Public Meeting* in England. There is, throughout the proceedings, to be no meeting whatever at which there can be any chair taken. The proper term would have been 'manager of the sham election.'

"The section itself is entirely at variance with Common Law. Even Sturges Bourne's Act itself expressly prevented the Parson appointing a deputy, which the present Bill proposes. The old spirit of the Common Law was widely different from either.

"Section 8 enacts, that a nomination, in writing, of every Churchwarden shall be *sent to the Parson*.

"There is thus to be no public candidature, nor even any publication of candidates' names. No one is to be able to know who is nominated, nor whether whoever is named be a fitting person, or but the mere tool of the manager of the election.

"By Section 9 the Parson or his deputy is to send out Voting Papers, *if* he find the candidates more than the proper number.

"As all is secret, and in his own hands, he can of course make a nominal contest, or not, or prevent one, as best suits his purpose.

"Sections 11 and 12 enact how the Voting-papers shall be signed, and that all shall be collected by the Parson.

"This arrangement simply puts the entire election in the hands of the parson. This secret system, be it observed, is the reverse of the secret system of *Ballot*, where the *right* to vote of every voter is known and admitted beforehand, but his *vote* is unknown. Here the *right* to vote is uncertain and unadmitted—made subject, indeed, to the arbitrary handling of an interested individual *after* the vote has been seen how given; while the *vote* is precisely made known, and made known only, to the one man who can use most influence over every elector—always an extraordinary influence over a large part of the electors. The scheme thus sought

some it is the custom to choose only one churchwarden. Such custom is good in each case alike. There cannot be the custom set up of having no churchwarden. That would be suffering a Parish to neglect its duties. It is unquestionable that originally many parishes did not think it necessary to choose a spe-

to be enforced does indeed set up a striking contrast to the only true mode of election, as so well laid down by Lord Coke, when he declares that, for any election to be a good one, '(1) It must be a *due* election; and (2) it must be a *free* election, *without displeasure or the fear thereof*.'¹

"But, to prevent any danger of the power not being, by all these 'pretty devices,'² entirely got into the hands of the Parson, care is taken that no power of scrutiny of votes shall exist. The Parson is to be absolute judge of every vote.

"By Section 13, the Chairman is to disallow all votes that '*he shall find to be invalid*;' and, having done so, to declare, on his individual *ipse dixit*, who is elected, by Notice stuck on the Door!

"The whole election and return are thus placed, irresponsibly, in the hands of the Parson, without appeal or redress; in defiance of every principle of justice, of Common Law, and of the uniform practice of ages under that Common Law. Even Lord Mansfield said that the ecclesiastical authority 'has no right to try the question; he cannot try the legality of the votes.'³ It was well said, two hundred and fifty years ago, that⁴ 'the temporal courts must always have an eye that the ecclesiastical jurisdiction usurp not upon the temporal.' There are certain precautions and safeguards that form inherent essentials to the integrity of the mere act of any election of representatives by a number of men (apart from the question of the right of vote itself). Without these, the name of election is but a farce and a mockery. These precautions and safeguards now exist in the case of the election of churchwardens. *The present Bill proposes to annihilate them all.* The only effects of such a Bill can be, altogether to destroy the power of the parishioners; absolutely to extinguish the most universal practice of Local Self-Government in England; to degrade the office of churchwarden into mere servile nomineeship; to take away all its respectability and responsibility; and to rear up the priesthood of one religious creed into an absolute sway over all the secular affairs which are of common interest to every parishioner of every creed in every parish in England.

"If this attempt be not met by an emphatic rebuke, what will be the end of the revolutionary innovations and encroachments on our Rights and Liberties, and on our so ancient and invaluable usages of Self-Government, which have been made so frequently of late years, and are continually now being made, with various pretexts and under various disguises?"

¹ 2 Inst. p. 169.

² This is a phrase specially thus used by the Bishops of the Church of England. See Coke 2 Inst. p. 603.

³ Burrow's Reports, 1422.

⁴ Coke, 2 Inst. p. 615.

cial officer to this duty,—the “Body of the People” then presenting any complaints against the parson;*—and we have evidence that sometimes years were let pass without choosing these officers, even where they had been chosen aforetime.† But the custom to choose such officers every year was always general; while the fact of their usual position gradually led to their being reckoned as the chief officers in the Parish. Hence, many other secular duties became, from time to time, committed to them by various Statutes. But it thus became necessary that there should be no exceptions or vacancies; whence it has consistently followed‡ that the rule now is, that the churchwardens must be chosen every year. If this duty is neglected it will be enforced by mandamus.§ The ecclesiastical courts have, of course, no jurisdiction in the matter, the office being, as already shown, purely temporal. It is the choice of the Parish that makes them Churchwardens, and that only. Nothing else is necessary to give them their full title, though ecclesiastics again attempt to interfere, by the pretence of their being “admitted,” and an oath being administered to them, through the archdeacon. The attempt has failed however; for it is unquestionable that he cannot pretend to do this otherwise than purely ministerially. He has no discretion in the matter. “The archdeacon has no power to refuse to swear and admit the churchwardens. For the Churchwarden is an officer of the Parish; and his misbehaviour will prejudice them, and not the archdeacon. It is an office merely temporal, and the archdeacon is only a ministerial officer.”|| “The Churchwarden is a temporal officer; and the goods of his parish are in his custody. The parishioners may trust whom they please.”¶ In case of dispute as to the election, the archdeacon cannot settle it, or entertain the discussion. He must swear in all parties, and leave the settlement of the title to the office to the temporal courts. Neither the Bishop of the diocese nor the Parson of the Parish can interfere in the matter.** “The Arch-

* See Gibson, as quoted before, p. 70.

† See Year Book, 12 Hen. VII. fo. 28.

‡ See the quotation in *note* at the beginning of this Chapter, from 2 Modern Reports, p. 238.

§ See *R. v. Wix*, 2 B. & Ad. 197.

|| 1 Raymond's Reports, p. 138, Chief Justice Holt.

¶ 12 Modern Reports, p. 116; and see before, p. 71.

** Both points are expressly decided in 8 Modern Reports, p. 325. And see 3 Burrow, p. 1420; 1 Strange, p. 52.

deacon is but a ministerial officer; and is obliged to do the act whether it be of any validity or not.”* “He cannot exercise any judicial authority.”†

If the Archdeacon hesitate, on request, to admit and swear in, he will be compelled to do this by mandamus, absolute in the first instance.‡ Even if there be contending parties, he has no choice but to admit and swear in all, leaving it to them to prove their claim in the ordinary courts. The old “sworn-men” were sworn in the Hundred court; and there can be no doubt that omitting to go through the form before the archdeacon cannot affect the title to the office. The quotations already made show that election, displacement, and fresh election depend on the Parish only. On those acts solely, therefore, depends the title to the office. The very terms, indeed, of the oath before the archdeacon,§ prove that it only relates to the presentments on Visitation. “The archdeacon is only a ministerial officer, and therefore bound to swear him. *The swearing is only matter of form; because a churchwarden may act before he is sworn.* The office of a churchwarden is a temporal office.”|| “A churchwarden may execute his office before he is sworn.”¶ “A Churchwarden is a Lay Officer; and his power is enlarged by sundry Acts of Parliament. And it has been resolved that he may execute his office before he is sworn.”** He cannot be compelled to attend the Ordinary for admission.††

A late Act of Parliament has made the taking of oaths by Churchwardens illegal. A declaration only can be made, which the proper officer is required to administer. If he refuse, he can be compelled to do so in the same way as formerly in the case of an Oath.‡‡

* 1 Strange's Reports, p. 609; and see Cro. Car. 551, 589; Cro. Jac. 532; and 1 Salkeld, 166.

† Baron Parke (Lord Wensleydale) in *R. v. Williams*, 8 B. & C. 681. If a false return be made, such as “not duly elected,” the return may be traversed under 1 Wm. IV. c. 21.

‡ *Ex parte Lowe*, 4 Dowling P. C. 15; *R. v. Middlesex*, 3 Adolphus and Ellis, p. 615.

§ And still more, if needed, its recorded origin. See Lyndwood, p. 109; and Gibson, quoted before, p. 70. || 8 Modern Reports, p. 380.

¶ Viner's Abridgment, vol. iv. p. 527.

** 1 Ventris' Reports, p. 267, and see *ib.*, p. 114, and Hardres, p. 364. See also, *R. v. Corfe Mullen*, 1 B. & Ad. 219.

†† *Stutter v. Freston*, 1 Strange, p. 52.

‡‡ 5 & 6 Wm. IV. c. 62, s. 9.

The actual Churchwardens are always the Returning Officers. To them is the Mandamus to summon a Vestry addressed. If there are actually no Churchwardens, the Mandamus must be addressed to the Parishioners generally.*

The time of the election is usually, but not necessarily, Easter Tuesday.† Though certain persons may avail themselves of an exemption,‡ all the inhabitants are liable to serve the office. The special exemption must be claimed to be available. It is not a disqualification. The not belonging to the Established Church does not make a man the less liable to serve this office.

The power of claiming exemption is not justified by any sound policy. Sound policy, on the contrary, points to requiring it of every man in his turn, that he take his part in discharging the duties of good neighbourhood. The lover of the Institutions of his country will never desire to shirk fulfilling his part in those Institutions.

The Churchwardens fill the place (with the few exceptions above alluded to) of Head Officers, for all secular purposes, in all Parishes where no Corporation or special local act exists. Often even such corporation, or local act, does not include all matters. Vestry meetings, unless where some other special provision exists,§ ought to be always summoned by the churchwardens.|| “The parson never summons the vestries, that being the office of the churchwardens.”¶ “The Churchwardens must summon the Parish.”** A Vestry ought always to be summoned on the request of a moderate number of inhabitants. In many cases this is required to be done by special Statute. It ought always, however, to be enforced, by a condition exacted at the time of election of the new churchwardens; and by removal, in case of refusal to comply.

As regards the practical course to be taken in removing a

* *R. v. Wix*, 2 B. & Ad. 197. See before, p. 54, note ‡. So entirely the reverse is it of being the fact that the Parson either can summon, or is an essential part and the head, of the Parish. See further, Chapter VI.

† See p. 83, note.

‡ The principal of these exemptions are Peers, members of Parliament, clergymen (including Roman Catholic clergy and dissenting ministers, who may serve by deputy: 1 W. & M. c. 18, s. 7), barristers and attorneys, physicians, surgeons and apothecaries, and commissioners and officers of excise.

§ See the following Sections on Surveyors and Overseers.

|| See fully hereon before, pp. 53–57. And the Churchwardens must act, in every case, as Returning Officers. See above.

¶ *Strange's Reports*, pp. 1045.

** 1 *Modern Reports*, p. 236.

churchwarden, it is simple enough. Such a step never ought to be taken except on occasion of great gravity. If the Churchwardens have not kept their accounts properly; if they have refused or neglected to carry out any Bye-Law or Resolution of Vestry; if they have, either by connivance or neglect, been parties to anything injurious to the interests of the Parish; in any of these or the like cases, the removal of them and choice of new ones is a right and proper course. In such case, a Vestry can be summoned by any number of the Parishioners, the signature of any one Churchwarden or Overseer being put to the copies of the Notice affixed on or near the church and chapel doors—the purpose of the Meeting being stated in the Notice. If every one of these refuse to sign the Notice, a mandamus should be at once applied for. At such Vestry, a resolution should be moved, setting forth in distinct terms the ground upon which the present churchwarden is proposed to be removed; and the name of a new churchwarden should be suggested in his place. Upon this the whole question will be raised. The resolution may be either rejected, or carried as first proposed, or a different name be inserted from that first suggested. If carried, and a new churchwarden or churchwardens chosen, the latter should be instructed, by another resolution, to take immediate steps to recover any moneys or other things in the hands of the rejected officer. They should immediately take upon themselves the functions of the office, and the Archdeacon will be compellable immediately to admit them, if they desire to go through that unnecessary form.*

An important part of the duties of the churchwardens, as temporal officers and representatives of the parish, is to see that the minister, who enjoys a public benefice, fulfils his duty to the public. It is too often forgotten that the laity are distinctly recognized, by the Law of England, as an essential part of the Church. It is too often forgotten that the churchwardens have it as a duty, on behalf of the parish, to take care that the minister fulfils his duty. This is the efficient countercheck on the right of presentation to benefices.† If these mutual relations were better remembered by all, it would be far better for all the parties, as well as for the vitality and progress of a real earnestness of Religion. Quotations from the Articles of Visitation themselves, which have to be answered by the

* R. v. Middlesex, 3 A. & E. 615.

† See after, Chapter VI.

Churchwardens, will give a better idea of how completely the minister is thus responsible to the chosen representatives of the "temporal estate," than any description can do.

Bishop Gibson puts the following under the first head of the articles of Visitation issued by him, when archdeacon in 1713, as to be answered by all churchwardens.

"Is your minister a person of sober, unblameable, and exemplary life ?

"Doth he preach constantly every Sunday, unless hindered by sickness, or other reasonable impediment ?

"Is he careful in visiting the sick, etc. ?"

The following, from the articles of Mountaigu, Bishop of Norwich, in 1638, show, still more forcibly, how it is the duty of the churchwardens to watch, on behalf of the parish, the conduct of the minister. The quaintness of the language, while it may almost excite a smile, shows that there was reality and earnestness at any rate; and that the visitation was then no empty form. It makes manifest, at the same time, the true position of the churchwardens as to ecclesiastical matters, and puts to shame the subserviency of modern incorrect statements of the Law relating thereto.

"Doth your minister or curate serve any more cures than one? If so, then how far are they in distance asunder? Can he do it conveniently ?

"For his person and deportment;—is he staid, grave, humble, modest; peaceably and religiously disposed? Is he of honest life and conversation in the world? Doth he endeavour and do his best to accord and keep his parishioners in peace; to take up and compound differences among his neighbours; according to solemn promise at his ordination ?

"Or is he a brabler, brawler, contentious, seditious party; a tavern hunter, an ale-house haunter, a drunkard, using unlawful and forbidden games? Is he riotous or unseemly in his apparel beyond his means; not fitting his calling; above his degree in schools; contrary to the Statute of this land ?

"More particularly, doth he commonly go in silk, satin, velvet, plush,—being haply but a curate? are his clothes rather horsemen's coats and riding jackets than priests' cloaks? Doth he wear long shaggy hair, deep ruffs, falling bands down to his shoulders; or useth he other indecent apparel, rather fitting a swaggerer than a priest?"

The articles issued by Archbishop Cranmer (1548), which were evidently prepared with great care, are many of them to the same effect. But there are others of a much wider scope. Thus :—

“Whether they be resident upon their benefices, and keep hospitality or no: and, if they be absent, or keep no hospitality, whether they do make due distributions among the Poor parishioners or not.*

“Whether Parsons, Vicars, Clerks, and other beneficed men, having yearly to dispend an hundred pound, do not find, competently, one scholar in the University of Cambridge or Oxford, or some grammar school; and for as many hundred pounds as every of them may dispend, so many scholars likewise to be found [supported] by them; and what be their names that they so find?

“Whether they have opened and declared unto you the true use of *ceremonies*; that is to say, that they be no workers nor works of salvation, but only outward signs and tokens, to put us in remembrance of things of higher perfection.

“Whether they have taught and declared to their Parishioners, that they may with a safe and quiet conscience, in the time of harvest, labour upon the holy and festival days; and, if

* See as to the duties of hospitality as an *essential* part of the purposes of endowments, before, pp. 28, 29. This was not forgotten at the Reformation. The following is contained among the “Injunctions” issued in the time of Edward VI., A.D. 1547; the substance of which was identically repeated in the “Injunctions” of Elizabeth, A.D. 1559. “Because the goods of the church are called the goods of the poor, and at these days nothing is less seen than the poor to be sustained with the same: all parsons, vicars, pensionaries, prebendaries, and other beneficed men, not being resident upon their benefices, which may dispend yearly twenty pounds or above, either within their deanary, or elsewhere, shall distribute hereafter among their poor parishioners, or other inhabitants there, in the presence of the Churchwardens or some other honest men of the parish, the fortieth part of the fruits and revenues of their said benefices;—lest they be worthily noted of ingratitude, which, reserving so many parts to themselves, cannot vouchsafe to impart the fortieth portion thereof among the poor people of that Parish that is so fruitful and profitable unto them” (Sparrow’s Canons, pp. 5, 6, and compare pp. 71 and 247). The same “Injunctions” contain provisions for the sending boys (at the expense of the benefice) to College and School, “which [boys] after they have profited in good learning, may be partners of their patron’s cure and charge, as well in preaching as otherwise in the execution of their offices; or may (when need shall be) otherwise profit the Commonweal with their counsel and wisdom” (*ib.* pp. 6 and 71). See also, Archbishop Sancroft’s Articles (III.), 9 Somers’ Tracts, 132, and Mountaigu, as above, Tit. 4, Art. 4.

superstitiously they abstain from working upon those days, that then they do grievously offend and displease God.*

“Whether you know any executors or administrators of dead men’s goods, which do not only [duly] bestow such of the said goods as were given and bequeathed, or appointed to be distributed among the poor people, repairing of highways, finding of poor scholars, or marrying of poor maids, or such other like charitable deeds.”†

Articles issued by Bishop Ridley, A.D. 1550, though differing from the last, exhibit no less of the practical and earnest mode in which, before ecclesiastical usurpation grew to a head, the Churchwardens fulfilled their duty in taking care that the minister fulfilled his. His first article is :—“Whether your curates and ministers be of that conversation of living, that worthily they can be reprehended of no man.”‡

It is self-evident that, so far from the fact of making returns to these Articles of Inquiry giving an Ecclesiastical character to any part of the Churchwarden’s office, it is precisely the re-

* Among the above “Injunctions” is the following :—“All Parsons, vicars and curates, shall teach and declare unto their Parishioners, that they may, with a safe and quiet conscience, in the time of harvest, labour upon the holy and festival days, and save that thing which God hath sent. And if for any scrupulosity, or grudge of conscience, men should superstitiously abstain from working upon those days, that then they should grievously offend and displease God.” And see the Statute of 2 & 3 Edw. VI. c. 19,—in which it is declared that “one day, or one kind of meat, of itself is not more holy, more pure, or more clean than another; for that all days and all meats be of their nature of one equal purity, cleanness, and holiness; and that all men should by them live to the Glory of God, and at all times, and for all meats, give thanks unto him :” also 5 & 6 Edw. VI. c. 3,—in which it is declared that “the times appointed specially for God’s Service, are called Holy days, not for the matter and nature either of the time or day; . . . neither is it to be thought that there is any certain time or definite number of days prescribed in Holy Scripture; but that the appointment both of the time and also of the number of the days is left, by the authority of God’s word, to the liberty of Christ’s Church;” and in which Act it is expressly provided that, though Sunday shall be a holy day, yet “it shall be lawful to any husbandman, labourer, fisherman, and to all and every other person and persons, of what estate, degree, or condition he or they be, upon the Holy-days aforesaid, in Harvest, or at any other times in the year when necessity shall require, to labour, ride, fish, or work any kind of work, at their free wills and pleasure.” Thus far were the fathers of the Reformation in England from setting any example of that worship of forms and ceremonies and days which marks our own *enlightened* (?) time.

† Sparrow, 25, 31.

‡ Sparrow, p. 35.

verse.* There is no stronger or more important illustration of the lay character and duties of the office, and of the rightful position of the Laity in regard to the Clergy. Whether a man belong to the established church or not, it is equally his duty, and should certainly be equally his desire, to take care, so far as in him lies, that the ministers of religion, especially those having the peculiar advantages and opportunities which the established church gives, fulfil the duties of their position. Ecclesiastics have sought—by attempting to make the office of churchwardens donative instead of elective; by getting the nomination of them into their own hands; and by illegal Canons and other usurpations—to free themselves from the responsibility which they owe to their parishes; a responsibility the more important to be watchfully maintained, inasmuch as their own appointment is usually by presentation and not by election. It becomes, however, but on this account the more urgently the duty of every good citizen to see that this responsibility is kept thoroughly active; and that the temporal office of the Churchwardens on this, as on every other matter, is never allowed to be overlaid by any devices of ecclesiastical evasion or usurpation.†

There is scarcely a matter connected with the welfare of the Parish in secular affairs, in which the churchwardens have not important functions. When the Committees of Parishes are treated of, this will be more particularly shown. At present, it will be sufficient to say that they are Overseers of the Poor by virtue of their office;‡ that they are bound to take measures, under various Statutes that have from time to time been passed, in relation, among various other matters, to watching and lighting, drainage, water supply, burial-grounds, and so forth, all of

* The churchwardens are not tied to any special articles of Visitation or Inquiry. They may present any matter they think fit: and they ought always to present anything objectionable in the conduct of the Minister.

† It has been already remarked that the Officers of any “ecclesiastical Districts” or “New Parishes” have no secular functions whatever. Care will be often needed to guard against the confusion which the name “churchwardens,” given to some of these, is likely to occasion. They have very little in common besides the name. They cannot act in any secular matter whatever, though it arise even specially within the district assigned to their Church, as in the case of a Lighting District (see *R. v. Staffordshire*, 23 Law Journal Reports, M.C. 337). Neither for summoning meetings nor for fulfilling the duties of Overseers are they in any way recognized.

‡ See after, Section 5 of this Chapter.

which will be hereafter pointed out. They are, in short, recognized, by custom and the legislature, as the Head Authorities and Representatives of the Parish, in all secular matters affecting the common obligations and common welfare of all Parishes, and in most of its relations to external affairs. In old churchwardens' accounts, such entries as the following occur continually,—illustrating their position in reference to the Institutions of the country, both of hundreds and shires:—

“To Hardinge the Bayliffe of the 100, for the sheriffs ffee for warninge y^e psh to answer 2 Indictm^{ts} in prox Hillar. 1665.

“High constable, for 9^d Tax, for relief of Marshalsea, K.B., and Hospitals, ending Midsummer 1669.”*

Several duties devolve upon them in conjunction with the Overseers of the Poor; which will therefore be noticed in treating of the latter office.

The churchwardens, it will have been already seen, are bound to give an account of all moneys received and expended by them on behalf of the Parish, as to any matters whatsoever. If they make default, or hesitate, they should be removed, and fresh ones chosen, who must promptly take means to enforce an account. In this matter, again, the Canons have attempted to interfere, with the object of getting, if possible, the churchwardens and parishes under ecclesiastical jurisdiction. Long, however, before Canon 89 was framed, which pretends to require the Churchwardens to give an account, it had been the imperative duty of the Churchwardens, enforced by the Common Law of the Land, to give such an account. So that, as to the giving such account, we must, in the words of Lord Coke, already quoted, “not rely upon that Canon, but upon the grounds aforesaid, namely, the common law, statute laws, and the continual and infinite judgments and judicial proceedings.”† Quite enough illustrations of this duty, and of the mode of its enforcement, have been already quoted. “Whatever comes into

* MS. Churchwardens' accounts of Hornsey, Middlesex. It used to be one of the regular articles of Inquiry by the jury at Quarter Sessions, “if the churchwardens of any parish have not every Sunday levied the money for relief of the prisoners in the gaol, and once in every quarter paid it to the constable of the hundred.”—Lambard's *Eirenarchia*, p. 475. Numberless other inquiries were, at the same time, made as to the fulfilment of the duties of Churchwardens, Constables, and all other officers. It was thus that the discharge of Local Duties was heretofore practically helped to be assured. See after, Chap. VII. Sec. 2.

† 13 Reports, p. 47.

their hands, or is under their control, of that they must render an account.”* It has been shown that if, *at any time* during the continuance of their year of office (and not only at the end of it, as the Canon has it), such account is not satisfactorily rendered, fresh Churchwardens may be elected, who may immediately sue those who have been dismissed, and compel an account.

Notwithstanding the attempts to get the churchwardens, in this matter also, under ecclesiastical jurisdiction, the spiritual courts cannot interfere. “The ordinary is not to take the account.” “The Spiritual Court has no jurisdiction to settle a Churchwarden’s accounts.”†

The churchwardens’ accounts for the past year ought always to be delivered to the Vestry in writing, before the election of new churchwardens is proceeded with. These accounts ought always to be audited by the Vestry, or rather by a committee of Vestry which shall present a report thereon to the Vestry, before the fresh Churchwardens are chosen. The Audit by the Vestry, and the passing of the accounts by that Body, are the only ordeals to which these accounts are subject, or to which they ever ought to be allowed to be subjected.‡

The property belonging to the Parish is vested in the Churchwardens for the time being; and they can sue and be sued, as a corporation, in respect to it. It has been already seen that Lord Hale declares that “Churchwardens are lay incorporations.”§ In his ‘Analysis of the Law’ the same learned judge says that “Churchwardens are, by the Common Law, a Special Corporation to take goods or personal things to the use of the parish.”|| In an important case it was laid down by the Court of King’s Bench that “Churchwardens are a Corporation at Common Law; and they are different from questmen, who were

* See Year Books, 12 Hen. VII. fo. 28.

† Strange’s Reports, pp. 974, 1133, etc.; and see *Leman v. Goulty*, 3 Term Reports, 3. See before, p. 84.

‡ It has been erroneously stated by some late writers that the churchwardens are bound to make up their accounts for the inspection of the Poor Law Auditors. This is entirely incorrect. There is no foundation for such a palpable impropriety. The 7 & 8 Vict. c. 101, s. 32 states the Auditor’s duties. If the churchwarden illegally help to cook an account, he is, very properly, made liable to heavy penalties. But the Poor Law Auditors have nothing to do with it.

§ Before, p. 81; and see p. 50.

|| See further hereon, Lambard, ‘Duties of Constables, etc.’ pp. 70, 71.

the creatures of the Reformation, and came in by Canon Law.”* In another judgment it is, in the like spirit, said :—“ Churchwardens have nothing but to the use of their parish ; and *therefore* the Corporation consists in the Churchwardens. And one, solely, cannot release nor give away the goods of the church ; and costs are in the same nature, which the one without the other cannot discharge.”†

It has already been seen that fresh Churchwardens can sue those whom they have supplanted.‡ They can sue any one else, including the minister of the Parish, for acts done not only in their own time but in that of any of their predecessors—the loss being not personal, but that of the Parish whom they represent.§ Nor, is it necessary, in order for them to do this, that they should prove their appointment to the office they hold. It is a sound rule, applying to their case as to others, that whoever is acting in an office must be taken to have been regularly appointed to that office, unless the contrary be shown. Though there have been some irregularity in their appointment, yet, if they are really acting, their acts will be valid, even to the matter of summoning a Vestry at which a Rate is made.||

Many parishes are in possession of lands which have been left them, from time to time, for various purposes. The Churchwardens used to be esteemed as having the title to this land vested in them. And common reason shows that they should be so esteemed. Practically speaking, they are so to this day in very many, probably most, parishes. But a decision was given long ago, on a mere verbal quibble, by which it was held that churchwardens, though expressly admitted to be a corporation to hold, and sue and be sued for, all furniture, moneys, and other goods belonging to the parish, were yet not so as to that very sort of property which is the least liable or able of any to be made away with—namely, land ;—the pretended ground being, that there may be a vacancy of the office. The distinction is unmeaning ; the ground of it is self-refuting. If it ever applied, it no longer applies, as churchwardens are

* *Stutter v. Freston*, 1 Strange, 52. See before, pp. 73–76, 86, as to the value of the Canons touching Churchwardens.

† Cro. Jac. 234.

‡ Before, p. 84.

§ See Lambard's 'Duties of Constables,' etc., p. 71 ; Cro. Eliz. 145.

|| See *Doe d. Bowley v. Barnes*, 8 Queen's Bench Rep. 1037 ; *Ganvill v. Utting*, 9 Jurist, 1081 ; *Turner v. Baynes*, 2 Henry Blackstone, 559 ; *R. v. St. Clement's*, 12 A. & E. 177.

now every year appointed. The subject, however, will be better examined under a separate head.* It shall only now be added, that an Act was passed, thirty-five years ago, which completely recognized both the power and the right of churchwardens and overseers, jointly, to be taken to have, as the chosen representatives of the Parish, the title to all Parish lands vested in them. It will hereafter be shown that this Act has also, in many cases, been quibbled away; and the mischiefs will be noticed that have hence ensued to Parishes. The duty of churchwardens to see to the due administration of charitable bequests, has been already seen to have been formerly fully recognized in the annual Articles of Inquiry. Towards objects that are for the use and benefit of the Parish, they can accept and hold gifts and bequests on behalf of the Parish.

Though the property of the Parish is thus vested in churchwardens during their term of office, they have no power to appropriate or apply any of such property, without the express consent of the Parishioners in Parish meeting, or Vestry, assembled. One of two or more churchwardens cannot act alone in the disposition or ordering of any matters. Nor can any fresh step of importance be taken by the whole without consulting the Parishioners.† This is in accordance with the right and necessary course of responsible and representative management, in whatever form or Institution it may exist. In the same way, gifts by the Churchwardens, without the assent of the Vestry, are void.‡ The Parishioners are the owners. Indeed the form of stating a wrong and claim, in legal proceedings, is, as has been already stated, “to the loss of the *parishioners*.” The churchwardens have simply the technical ownership, in trust for the Parish; and are accountable, as has been seen, to the Parishioners.

* See Chapter V.

† See 7 Modern Rep. p. 70, which will be more fully cited hereafter, Chap. VII. Sec. 7. See also Cro. Car. 234, and 1 Ventris, 89; and the case in the Year Books, 13 Hen. VII. fo. 10, which pithily puts it, that they may have an action against a wrong-doer, or may accept gifts, for all this is for the advantage of the Parish; but they cannot release an obligation, nor make any gift, nor do anything for the disadvantage of the Parish. Very many cases to the same effect might be quoted. See before, p. 99.

‡ See the quotation from Lambard, before, p. 83, and others on the preceding page. So payments wrongfully made, subject the churchwardens to heavy penalties. 7 & 8 Vict. c. 101, s. 32, at end.

It is in the same sound spirit that, being a corporation not on their own account but on behalf of others,* they cannot bind the Parish in perpetuity. They cannot borrow money in their corporate name (unless under special circumstances enjoined by Act of Parliament) nor do any other act that will be injurious to the Parish by imposing an obligation on it after they have ceased to hold office. The greatest mischiefs might accrue were this otherwise, and did the Churchwardens possess any power over the future purse of the Parish. It is on the same ground that they cannot claim retrospective reimbursements. The proper course is, to lay an estimate before the Vestry, and ask for such rate as will meet it—but not to spend money unknown to the Vestry, and then demand repayment. Such a course would be contrary to the fundamental principle of the institution of the office, and inconsistent moreover with its true dignity.†

During the time of holding office, the Churchwardens are entitled to the possession of all Parish books, and of all papers and deeds belonging to the Parish. If any of these are withheld, the churchwardens may recover possession by legal proceedings, varying according to the circumstances.‡ Such books or papers cannot be withheld under the plea of the holder having any claim on the parish.§ It should be added, that Churchwardens are very properly protected by the Law against vexatious proceedings being taken against them for things honestly done in the discharge of their office.||

Other powers or duties which have been committed to Churchwardens, will be noticed in their proper places in later Chapters. It is enough now to say that, for most purposes,

* See before, pp. 78, 99.

† See the cases of *Jones v. Hughes*, 19 Law Journal Rep. Exch. 200; *Furnivell v. Coombes*, 5 Manning and Granger, 736. The point sometimes alleged, about the churchwardens not having a common seal, is incorrect. That merely artificial form is not the thing in question, as in many cases money can be borrowed and other corporate acts be done. The *principle* is that stated above, which is thoroughly sound. As to a beneficial agreement, see *Martin v. Nutkin*, 2 Peere Williams' Rep. 268. As to retrospective payments, see *R. v. Bradford*, 12 East, 556.

‡ Thus Surveyors may be compelled by *mandamus* to give up Books. An action of trover or of detinue will lie in other cases. See *R. v. Round*, 4 A. & E. 139.

§ *Moss v. Thornely*, Queen's Bench, 2 May, 1856.

|| See 7 Jac. I. c. 5; 21 Jac. I. c. 12; 5 & 6 Vict. c. 97, s. 2.

they are the chief secular officers of the Parish ; and its representatives in general external relations.* The position is a truly honourable one ; the more honourable that it calls for intelligence, and a sense of independence and public duty, and involves a true responsibility. Responsibility, well fulfilled, is the highest test of a man's worth and dignity. When that responsibility involves what concerns the common good of those among whom a man lives as neighbours,—and which common good the latter have, by their choice of him, given him the position and opportunity to promote,—the honourable ambition of a good man will find ample field for its best exercise. And the more such responsibility and intelligence are exercised, and the wider the scope given for their exercise, unfettered by any attempts at external intermeddling, the better must it always be for all the parts of the Community, and therefore for the Nation. By imposing external restraints, the office becomes degraded : its actual responsibility is destroyed : honourable men despise it. The more such intelligence and responsible independence are invoked, the more will they always become healthily developed. He only is the true statesman and the true philanthropist, who seeks to cherish such development, instead of checking it.

* An example may be given from the annual Mutiny Act ; which contains the following (it stands as s. 82 in 18 & 19 Vict. c. 11) :—

“The Churchwardens of every Parish in England and Ireland, and the Constables or other officers of every Parish or Place in Scotland, on receiving a notification from the Secretary-at-War of the names of any soldiers belonging to the said Parish who have, for meritorious conduct in the army, received Her Majesty's special approbation, or who, in consequence of misconduct, have been dismissed Her Majesty's Service with disgrace, shall affix such notification on the outside of the door of the church or chapel belonging to such parish or place, on the Sunday next succeeding the receipt of the said notification.”

It is not possible to give, in this Section, all the illustrations that might have been collected as to either the true mode of *election* or the *office* of Churchwardens. Further illustrations will be found in later Sections and Chapters. The reader may be now particularly referred to an extract from Archbishop Whitgift, which will be found in Section 13 (on “Parish Clerk”) of the present Chapter.

SECTION II.

SURVEYORS OF HIGHWAYS.

THE office next to that of Churchwarden, as concerns the common welfare of the Parish, is that of Surveyor of Highways. In the practical importance and range of its active and constant duties, the latter office is, indeed, superior to the former.

This office and its duties do not depend on any late legislation. Nothing is more mischievous than the empirical tendency of our time to look only to the letter of some special Act of Parliament, in order to learn the powers and duties of men in their social relations, instead of looking to the spirit of the Law and Custom through past ages.* In order rightly either to appreciate, understand, or discharge, such powers and duties, it is essential to know something of their history. How essential this is in the case of *the Parish* generally, and of the office of Churchwarden, has been already seen. It is no less so in reference to the office and duties of Highway Surveyor, or *Waywarden*, as the officer used to be generally, and is still in many places, called.

The maintenance of the common Highways, both by land and water, has, from the earliest times in England, been an inexorable requisition of the Law. Highways, Bridges, and military defence, constituted the threefold conditions (*trinoda necessitas*) always inseparably attached to the tenure of Land, which even religious endowments could not evade. The taking care that this condition, as regards Highways, was fulfilled, has always been, like every other matter of Local concern, an obligation on the Parish. The amount necessary to the fulfilment of the obligation implied in this condition, has always been determined by the Legislative Body of the Parish, expressed in the shape of a Bye-Law. Indeed the making of Bye Laws for a Highway Rate is of so much more ancient and common practice than that of a rate for keeping up the fabric of the Church (which is not, like the above, an ancient obligation on the

* See before, p. 10.

holders of land, though it is often erroneously asserted to be so), that the cases as to Church Rates are found to be sustained, both in argument and judgment, in the old Reports, by comparing a rate for repairing the church to a rate for repairing Bridges and Highways.*

Practically speaking, it was the Constable's duty to see that the conditions of their tenure were fulfilled by the holders of land;† and it was always a bounden duty of the Courts Leet regularly and periodically to inquire "if there be any ways, waters, ditches, or paths, obstructed, narrowed, or stopped, or turned out of the right course to a wrong course, unto the damage of the King's people; etc. etc." The like inquiries were always made at the Sheriff's Tourns. If any such mischiefs were found, penalties were imposed.‡

One of the old Anglo-Saxon Laws enjoins, that "a highway shall be broad enough for two wains to pass each other, with room for the drivers to ply their whips freely, and for sixteen soldiers to ride in harness side by side."§ By 13 Edw. I. (Statute of Winchester) c. 5, it is enjoined "that highways leading from one market town to another shall be enlarged, where bushes, woods or dykes be; so that there be neither dyke, tree, nor bush, whereby a man may lurk to do hurt, within two hundred feet of the one side, and two hundred feet of the other side of the way." The same Statute enjoins the constable, whose duties in relation to this matter have been already mentioned, to make regular returns on the state of the Highways. In articles specially enumerated as to be periodically inquired of, in reference to the Statute of Winchester just quoted,|| there is contained the following:—"And [they are to inquire] if the

* See before, p. 50. "Causey" is *Calcey* (from *calx*, a *heel*) a *raised way*, a *high-way*; that is, raised more or less above the adjoining ground, to keep it marked out and dry.

† There is an implied error in what Blackstone says (Com. vol. i. p. 357), that "it was not then incumbent on any particular officer to call the parish together, and set them upon this work." It was unquestionably the Constable's duty to see that the work was done, and to present any defaults to the Court Leet.

‡ See also 2 & 3 Philip and Mary, c. viii. § 2, after, p. 107.

§ Laws collected in the time of Hen. I.; lxxx. 3.

|| These are usually printed as Statute 34 Edw. I. Stat. 2. They appear in fact, however, to have been rather the authorized copy of the articles used by every Sheriff, when he summoned the Juries to make the Inquiries. See note to large folio edition of Statutes, vol. i. p. 245.

highways from one market-town to another be enlarged, as well in our Lord the King's own Woods as elsewhere, according to the Statute; and if they be not enlarged, to inquire what ways and where they be, and who ought to have enlarged them; and of such as do hinder such enlargements."* The means and machinery, in all these cases, were the responsible and efficient local Institutions of the Hundreds and the Parishes, acting through their responsible officers and regular courts.

By Statute 22 Hen. VIII. c. 5, which was made to meet some cases of doubtful liability, power is declared, in conformity with the old Law and Custom, as already stated, to raise a tax, "by assent of the constables or inhabitants," towards remedying decayed bridges and the adjoining parts of highways. This was, of course, only of special application; but it recognized and re-declared the old and sound principle and practice.

The practical importance always attached and attention given to the maintenance of the Highways, are further proved and illustrated by the fact that, in the "Injunctions" of Edward VI. (A.D. 1547) and of Queen Elizabeth (A.D. 1559), already quoted, the devotion of any surplus stock to "the reparation of the Highways" is mentioned.†

In 2 & 3 Philip and Mary (A.D. 1585), an act was passed (c. 8), called "the Statute for the mending of Highways." By this it was enacted, or rather declared, in conformity with what have been shown to be the principle and practice of the Common Law in reference to Parishes, that "the Constables and Churchwardens of every parish shall yearly, upon the Tuesday or Wednesday in Easter week, call together a number of the Parishioners; and shall then elect and choose two honest persons of the parish, to be Surveyors and Orderers for one year of the works for amendment of the Highways in their Parish." It was evidently found that, with the increase of population and commerce, special officers became necessary to attend constantly to this matter, instead of its remaining a part of the duty of individuals under supervision of the constables, or subject to occasional direct orders for special work under a Bye-

* See also, Articles of View of Frankpledge, 18 Edw. II.

† Sparrow, pp. 10 and 75. So, again, the churchwardens are to state whether "legacies given" for "amending highways be undistributed, and by whom." Ridley's "Articles" (A.D. 1550), Sparrow, p. 37; so also in Cranmer's Articles (A.D. 1548), *ib.*, p. 31.

Law of the Parish. It is curious that this statute treats the Constables and Churchwardens as the actual authorities in the matter;—the chosen Surveyors not having so much a distinct and independent authority, as filling the place of overlookers of works. The Secular character of the Churchwardens is, however, thus illustrated, though the Constable was clearly then considered to take precedence. “The Constables and Churchwardens” are to appoint days for amending the highways, and “openly in the church to give knowledge of the same days:”* the Surveyors are to “order and direct” the persons working on those appointed days. Every occupier within the Parish is declared proportionably liable to contribute labour to the needful work. It is declared that every Leet shall inquire of all offences against the Statute; and assess fines and forfeitures. And, to show how the matter was thoroughly worked out without any change of Principle, it may be added, that this Act declares that, if the Leets do not fully inquire, the Quarter Sessions are bound to do it (by a jury, not by summary jurisdiction). In either case, alike, estreats—that is copies—of all the fines and forfeitures imposed, are to be delivered to the Bailiff or High Constable of the *hundred*, and to the Constable and Churchwardens of the *parish*, wherein the defaults are made. And the Bailiffs and Head Constables are required, and made compellable, to account to the Churchwardens of every Parish (the Churchwardens being the holders of all Parish Property) for the fruits of all distrainments made and moneys levied under such fines and forfeitures. And all fines and forfeitures are declared to belong to the Churchwardens of every Parish wherein the offences shall be committed, and the proceeds thereof are to be bestowed on the highways within the parish.

This Act was made to last for seven years. By 5 Elizabeth c. 13, it was renewed for twenty years, with increased powers recognized in the Surveyors. By 29 Eliz. c. 5, it was made perpetual. In the meantime, another Act had been passed, in the 18th Eliz. c. 10, still further recognizing the authority of the Surveyors of Highways. They are no longer spoken of as acting in the character of mere clerks of works under the Constables and Churchwardens, but are treated as independently responsible officers of the Parish.

* See before, p. 53.

As population and trade increased, which had already created the necessity for treating this as a separate class of functions, the necessity became more and more felt of recognizing and suggesting the full authority of the officers chosen to attend to the highways,—the all-important means of intercommunication and intercourse between place and place. It was felt that their authority, to be efficient, must be independent, altogether, of that of the Churchwardens and Constables, though derived from the same source, and responsible to the same original Body. Accordingly, in the 13 & 14 Charles II. an Act (c. 6) was passed “for enlarging and repairing of common Highways.” By this it was enacted—the same in spirit as before, but differing somewhat, and instructively to us, in detail —“that the Churchwardens and Constables [the Churchwardens take precedence now] or Tythingmen of every *Parish, Town, Village, or Hamlet*,* for the time being, shall, upon Monday or Tuesday in the Easter week, yearly, whereof notice shall be publicly given the Sunday foregoing in the church, with the advice and consent of the *major part* of the Inhabitants *which shall be then present*,† choose two or more sufficient and able persons, residing and inhabiting within their parish, town, village, or hamlet, to be Surveyors of their Highways for the year next ensuing.” Powers and duties are recognized in these Surveyors of a much enlarged character. They may, *with the advice of two or more substantial householders* of the Parish, lay an assessment on the Parish. They are, however, required to “*make and yield up to the Inhabitants of the Parish, Town, Village, or Hamlet, at some public meeting to be appointed by the said Inhabitants, a perfect accompt in writing, under his and their hands, of all moneys received or paid within his or their year;—etc. etc.*”

The Law as to Surveyors of Highways remains substantially the same at this day as is thus stated in the Act of Charles II.

It will be seen, from this rapid glance at the history of the office of Highway Surveyors, that the fulfilment of needed duties has never been unprovided for; and that we do not owe to modern enactments the most important or the soundest parts of the legislation now existing on the subject. Later legisla-

* See before, Chap. I. pp. 35, 36, and *note* ‡, 38, where all these Local divisions are seen recognized in the same full manner.

† See before, p. 57.

tion has tended indeed to narrow, rather than make surer, that sense of responsibility to and between those concerned, which can alone make any office, and the discharge of any common duties, thoroughly satisfactory and efficient. Later legislation on the subject of the Law of Highways has certainly not been so sound, satisfactory, or consistent with practical principle and efficiency, as the Common Law is, and as the older legislation was. The Highway Act of 5 & 6 Wm. IV. c. 50 does, however, in several respects, return back to the earlier and sounder principles and practice, in matters wherein these had been most improperly and injuriously departed from by the Act of 13 Geo. III. c. 78. After all the legislative vicissitudes through which it has passed, the office of Surveyor of Highways remains assuredly the most important and responsible of all those connected with the Institution of the Parish.

It were useless to follow, in detail, the legislation from the time of Charles II. The Highway Act now in force is that, already named, of 5 & 6 Wm. IV. c. 50. This act retains all those local divisions and subdivisions which custom or the Statute of Charles II. had recognized.* It declares that "the inhabitants of every parish or other division, at their first meeting in vestry *for the nomination of overseers of the poor*† in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish [or other division] for the year then next ensuing." The person so chosen must of course be a Parishioner. But a qualification is here imposed, in addition, of real estate to the value of ten pounds a year, personal estate of £100, or occupancy to the annual value of £20.‡ The older legislation contented itself with suggesting the choice of the *best man*, without regard to the money he might happen to have in his pocket.

Instead of the Surveyor chosen, as a Parishioner, to act; dignified by filling a responsible office to which the confidence of his neighbours has raised him; and fulfilling, therein, for the time, the proportion of duties to his neighbourhood which every man owes;—the very pernicious suggestion is made, in this Statute, of the evasion of personal duties, and commuting the same for money. This is but one example of the mischievous

* See 5 & 6 Wm. IV. c. 50, s. 5, and before, pp. 35, 38.

† See after, Sec. 5, "Overseers."

‡ 5 & 6 Wm. IV. c. 50, s. 7.

tendency of the day.* A paid Surveyor, even one not an inhabitant, but a stranger to the parish, may be appointed under this Act. If such paid surveyor is appointed, however, he is to be appointed by the majority of inhabitants *assembled*; it cannot go to a poll; nor are the votes to be taken according to the unconstitutional innovation of Sturges Bourne's Act.† The majority of those assembled may nominate and elect a paid surveyor, and fix such salary as they shall think fit.‡

If the inhabitants neglect to choose a Surveyor, or the one appointed neglects the fulfilment of his duties, or is disabled, the Justices, at special sessions of the Highways, may appoint a surveyor till the next annual meeting of the Parish.§ A more proper course would be, to maintain the old responsibility of the Hundred to see that each Parish within it fulfils its duty. Many Parishes have the rule, and it ought to exist and be enforced in all, that, if any person be elected to the office of Surveyor, or any other, and refuse or neglect to serve, he shall pay a fine, to the use of the Parish. Such Penalty can be recovered by the Churchwardens; and it is only proper and right that it be enforced in every case. If men will not fulfil the duties they owe to their neighbourhood, they ought to be thus punished for their selfishness and neglect.||

The same Act recognizes the power, which exists of Common Right, for two or more parishes to unite into districts for the management of their Highways. In such case, however, there must be a separate person appointed by each parish in the district, to make, assess, and levy the highway rate.¶

This power and practice of forming Districts is, however, one which can only, usefully, be applied where there are two or more very small parishes adjoining each other. The larger

* The power recognized by the same act, to choose a Committee as a *Highway Board*, with paid officers and servants if needful, prevents the excuse which might otherwise be speciously (but not soundly) set up for such a provision.

† See before, p. 57.

‡ 5 & 6 Wm. IV. c. 50, s. 9. See further below, as to applying this section to the case of Parishes wishing to join in keeping their roads in repair. The latter part of sec. 7, enabling any person to serve by deputy, comes under the same observations as are above made on this evasion of personal duties. As to the election, see before, p. 57.

§ *Ib.*, secs. 11 and 12.

|| See before, p. 48 *note*, and after, Sec. 15, and Chap. VIII. Sec. 7.

¶ 5 & 6 Wm. IV. c. 50, ss. 13, 14, 15, 16, 17.

the district committed, in the way here suggested, to one man to manage, the less well he will fulfil the charge. He has not that immediate interest in the result which an actual inhabitant has, and which is always so essential to ensuring good results. He is, in this case, under no supervision or control; and therefore under no kind of responsibility. He is not subject to annual appointment; nor is he even to be appointed at all by those whose affairs he manages, and whose money he expends. The forming of Districts under this Act is therefore very much to be deprecated. It is tying up the powers and functions of Vestries and Parishioners; and, in so doing alone, has a very injurious moral and social, and even political, effect. The only proper course to take in this respect would be, the appointment of a Board by the adjoining Parishes who desire to unite; which Board should appoint a Surveyor, whose proceedings they should control and direct; they themselves being directly responsible to their respective Vestries. By a singular inconsistency and departure from Principle, it has been held that such a Board cannot be chosen *under this Act*.* But the same *practical end* may always be accomplished, under the Common Law, by the annual appointment of a *Committee* by each of the agreeing Parishes, instructed to act in unison, and to superintend some one person who shall also be separately chosen by each of the Parishes as paid Surveyor.†

Many of the functions entrusted to the Surveyors are obligatory: others are permissive. They are bound to keep all the Roads in good repair. And the word "Highway" includes all footpaths, bridle roads, and otherwise.‡ This is important. Many Highway Surveyors in the country fancy they have only to do with the broad high roads,—the main carriage thoroughfares. Thus the footpaths,—which, as a general rule, are really of far more importance to the health and convenience of a large part of the public,—get neglected and encroached upon. There cannot be a greater mistake, or a more culpable neglect of duty.

The Surveyors may, *with the consent of the Vestry*, contract for purchasing, getting, and carrying, the materials required for the repair of the roads. But they are prohibited, under penalty, from having any part, share, or interest, direct or indi-

* R. v. Bush, 9 Adolphus and Ellis, 820.

† In accordance with sec. 9, as above.

‡ 5 & 6 Wm. IV. c. 50. s. 5.

rect, in any contract or bargain whatsoever.* Nor must any Surveyor use or let to hire his own team, or sell his own materials, for any purpose connected with the fulfilment of his duties as Surveyor.

There is, indeed, an inconsistent and most improper proviso introduced, between brackets, in this section of the Act, enabling two justices, in special sessions, to grant a license to violate this prohibition. Nothing can be worse. No honest Surveyor will place himself under imputation, by taking advantage of this smuggled and fraud-inviting proviso. No honest Justice will ever grant such a license. Such a proviso comes of legislative tinkering, without the least regard to Principle. In special cases a Surveyor may be properly enough allowed, by the Vestry, to use his own teams. But, except under such special circumstances, the permission can only be a cover for jobbery. The special sessions license is a mere *form*.

The care and superintendence of the Highways is immediately connected with that of the Drainage of the Parish. This will be more fully shown in the Chapter relating to works to be done. It need now only be stated that very important additional powers and duties in these respects, though entirely in conformity with the Common Law, have been thrown on Surveyors of Highways by the "Nuisances' Removal Act, 1855."

Every Surveyor is bound, by the terms of the Highway Act, to keep a full and exact account of all moneys received and paid; of all work done, and when and where and by whom done; and of all tools, materials, and otherwise. This account is to be open, at all reasonable times, to the inspection of any inhabitant wishing to see it, without any payment; and any one may take what copies of any part of it he likes. Every year the account is to be made up, balanced, and laid before the parishioners in Vestry, within fourteen days after the new election. The Vestry can order an abstract of this to be printed.† The Surveyor must verify this account before the special session of Highways, within a month after the new election, as well as make a return as to the state of the Roads.‡ At that time, any parishioner can object to any item; and the justices are required to hear the complaint, and make order accordingly. Justices are sometimes anxious to engross the control of surveyors' accounts. It is perfectly clear, however, that no power

* Section 46.

† Secs. 38, 39, 40, 44.

‡ Sec. 45.

or authority is given them, by any words of this Act, to exercise such control. It is certain that the Common Law gives them no pretence for any such attempt at control. The only case the Justices can interfere in is, when any parishioner makes a complaint as to any item of the account. The Highway Act strictly defines and limits the authority of the Justices in the matter. It is, (1) to examine the Surveyor as to the *fact* of the truth of the accounts generally, or of any particular charge:—not to adjudicate on its propriety, or to allow or disallow the accounts; (2) *if* any ratepayer shall make complaint against any charge, to hear such complaint, and make order thereon.* It is clear, however, as to the latter,—the only case in which any discretion is vested in them,—that no honest man will complain before the Justices unless and until he has first availed himself of the opportunity of stating his objections in the Vestry itself, which is in every case open to him.

Sufficient care is not usually taken in keeping the Surveyors' accounts. The particulars are rarely entered as they should be; the proper returns are not made. The chief reason of this is the modern innovation which has required the production of the accounts before the Justices, instead of confining the *entire responsibility*, as it ought to be, and used to be, to the Vestry itself. The division of responsibility always practically leads to the absence of any responsibility at all. The Parishioners are led to neglect investigating the accounts as they ought. The Surveyors are often induced to try to "cook" part of their accounts, in order to avoid loss in case of any capricious objection being taken before the Justices. The Justices themselves of course know nothing of the matters, and cannot be expected to take any interest in them, or to be able to form a satisfactory judgment. All is left to the Justices' Clerks; whose chief care is, naturally, that their own fees are paid. As to the accounts, it is not at all their business to see that these are in due form; but it is their duty, under the Highway Act, to see that the returns are made as to repairs, etc. This, however, they, quite naturally, equally neglect. Indeed the task is an impossible one for them to fulfil. The whole matter, in short, does but illustrate the unquestionable fact, that nothing can be a substitute for those systems of responsible periodical inquiry, by Constitutional and efficient methods, which have been already

* There is no appeal from the Special to the Quarter sessions. *R. v. West Riding*, 1 Q. B. 624.

so often referred to and illustrated;—which were formerly universal, but which modern Legislation has, in its hurry and empiricism, left wholly out of sight.

The irregularity and illegality of the accounts every year passed, under the system established by the above Act, is astounding. It will, indeed, be incredible to any one who has not looked into the matter. The proper and only right course is, for the Vestry of every Parish to insist upon these accounts being laid before them for the purpose of being carefully examined by a Committee of Audit, as an essential *preliminary* to their receiving the verdict of “passed,” on the Report of such Audit Committee to a subsequent full Vestry. The entire power to enforce this is in the hands of every Vestry; and those who have the interests and sound government and permanent welfare of their Parish at heart, will not suffer themselves to be diverted from the fulfilment of this course by any reference to that division of responsibility which has been alluded to.

The Surveyors are, of course, entitled to charge any expenses incurred by them in the proper sphere of their duties; in maintaining any public right; or resisting any encroachment or legal proceedings. It must always be remembered that the duties and obligations as to Highways are not defined or limited by the above or any other Act of Parliament, but are wholly founded upon, and chiefly marked out by, the Common Law. These duties will be more fully pointed out in a later Chapter.*

For failing in his duties, of any kind whatever, the Surveyor is liable to penalties, to be recovered before justices. The Vestry can also refuse to pass his accounts.

In some cases, a Highway Board is chosen by Parishes, instead of the appointment of one or more Surveyors. This is in pursuance of the old Common Law Committee Practice, which is simply thus recognized by the Highway Act. This is a very desirable course where the population of a place becomes so large that the Surveyor would otherwise be able to evade the responsibility of his position, and to make a job out of that which is committed to him for the common good. The nature and action of this Board will be more properly considered under the head of “Parish Committees.” Its duties are the same as those of other Surveyors; but it may buy and hold Land in a corporate capacity.†

* Chap. VII. Sec. 1.

† See 5 & 6 Wm. IV. c. 50, ss. 18, 19.

Wherever a Local Board of Health exists, under the Public Health Act,* that Board is in the same position as a Highway Board; though it cannot be said that it represents as truly the Parishioners, the mode of its election being by Voting Papers and by cliqueism, instead of in open public meeting of the Vestry.†

Whoever may be the persons or Body filling the Office of Surveyors, they are bound, and may be compelled by *mandamus*,‡ to deliver up to their successors in Office, within fourteen days after the close of their year of office, if those successors be then appointed, and at any rate within fourteen days after leaving office, all books and accounts, as well as all money, tools, materials, or otherwise which they may hold in their official capacity. At the same time, it must be remembered that, until the actual appointment of successors, the Surveyors for the previous year remain in office, and must continue to act.§

There are some cases in which the duty of summoning a Meeting of the Parish devolves on the Surveyors of Highways. It is thus when any person seeks to dedicate a new road, for the repair of which the Parish will, if consent be given, become chargeable; or when the Surveyors think it necessary to expend more than a limited amount of rate; or when certain parishioners desire to divide the team labour between them.|| In every such case, the Surveyors, not the Churchwarden, summon the Vestry meeting. The method is, otherwise, precisely the same as in every other case of Parish meetings. There are many other occasions on which it is proper that the Surveyors should join in signing the Notice of Vestry.

Thus, while the functions of the Churchwardens have themselves increased in importance in many respects, they have become separated from matters relating to the Highways, though by no means so from all other matters connected with the public common convenience and health, as will hereafter appear. At the same time, the officers who were, at their first separate existence, little more than subordinate to the Churchwardens, have gradually had larger functions and powers placed by the Parishes in their hands, and become separately responsible to

* 11 & 12 Vict. c. 63, s. 117.

† See after, Sec. 7.

‡ *R. v. Round*, 4 Adolphus and Ellis, 139.

§ 5 & 6 Wm. IV. c. 50, ss. 6 and 42.

|| *Ib.*, secs. 23, 29, 35.

the Parish. They are now, assuredly, the most important of all the Parish Officers, with the exception of the churchwardens;—and, so far as the practical special duties of their office are concerned, these are unquestionably of wider, more universal, and more constant importance and responsibility than even those connected with the office of Churchwarden.

Attempts are being ceaselessly and systematically made, in our time, to destroy in England the reality and essence of those Institutions which are alone characteristic of a free people; and the maintenance of whose reality and vital activity is absolutely essential to its free and intelligent existence. Instead of the sound, habitual, and invaluable action of *the Parish* being sought to be maintained, adapted, and reinvigorated,—as would always be the aim of the true patriot and Statesman,—this is being continually sought, under pretentious sophisms, to be fettered, emasculated, and altogether killed out. It is sought to bring every thing, instead, under the blighting and degrading control of an arbitrary and irresponsible bureaucratic *régime*. These attempts have not left the office and duties of Surveyors of Highways without strenuous endeavours to do away with them, and to introduce various theoretical nostrums in their place. Presumptuous incapacity daily proposes reckless changes on this and kindred matters, at a time when there is less practical knowledge on such matters within the walls of Parliament than at any former period of our History. Those interested in the increase of functionarism and patronage, continually press forward such revolutionary changes, with every advantage of opportunity and influence on their side. It behoves those who value free institutions, and who conceive that true Progress and reckless perpetual Change are not the same things, to watch narrowly all the attempts thus made to meddle with and destroy, under colour of specious pretences and got-up *ex parte* cases, the Institutions, means, and methods, which secure the fullest consciousness of obligation, the strongest inducement to observation and discussion, and the surest sense of responsibility, in and between those who are most interested in the attainment of the best results.

SECTION III.

CONSTABLES.

THERE is nothing that more intimately shows the secular character of the Parish, than the Common Law, and the practice under it, as to Constables. The choosing its own special officers to take heed to the keeping of the peace, and holding these officers responsible to it for the discharge of their duties, is one of the most ancient, as it is the most natural and obvious, of the characteristics and functions of that universal Institution of Local Self-Government—the Parish.

The ancient Law and practice on this subject are strikingly remarkable for their completeness as well as their simplicity. The fundamental principle, by the practical vitality of which alone can peace and good order be secured, is, the entire responsibility of every place, to each of its own inhabitants and to the State, for the keeping of the peace within its limits. The enforcing of this responsibility, and so making the sense of it habitual to every man, are the only means by which the active attention of all those concerned can be secured. The securing that active attention is the only means by which a really efficient watch and ward, that is to say, the real maintenance and security of the Public Peace, can be attained. At the same time, it is thus only that any people can be free from that interference with public and private liberty which must always accompany such a “Police” force as the governments of continental nations are unhappily allowed to keep up. The modern system of commuting, for money payments, the duty of giving active attention to the arrangements for matters of this sort, is an unmixed social, moral, and political evil.

The constabulary arrangements which have heretofore existed in England for fourteen hundred years, are based on a very simple but sound view of human nature. That view is, that those most immediately concerned in the taking care of their own safety, and in the protection of their own property, are those most likely to take vigorous and efficient means to

secure these ends. The constantly-maintained policy of the English system (until of late) has been, to fix all men with the closest sense of the personal responsibilities attaching to them as citizens; to have it continually imprinted, practically, upon them, that those who would be well governed must take a real and active part in governing themselves, and managing their own affairs. To do their own governing for themselves has been, in former times, the guiding spirit of our fathers. To gratify their selfish ease by giving up all this to somebody else to do for them, is, unfortunately, the spirit and tendency of our day. Every fresh step made in the way of undermining the sense of practical responsibility, and substituting that of dependence and commutation, lessens the spirit and earnestness with which the duties and responsibilities that remain are set about to be discharged. Thus craftily and step by step the course is cleared for fresh inroads; and fresh opportunities are given to the closet philanthropists of the day, to parade elaborately got-up pictures of mischiefs, for which they have cut and dried procrustean remedies ready to hand.

A very little knowledge of human nature, and of human history, will make it clear to every practical mind, accustomed to mix in human affairs in any other way than from the recesses of a bureau, that, entirely apart from any arguments drawn from abstract considerations of political theory or ancient usage, it is by the constant maintenance of this responsible sense only, that a system of constabulary can ever work soundly and efficiently. This is a matter most important to the peace and good order of society, and no less so to the maintenance of our civil and political liberties. It is a subject which every friend of order, every holder of property, ought thoroughly to look into, no less than he who would jealously maintain, for its own sake, the different but essentially connected parts of that noble fabric of liberties which our fathers so manfully and successfully upheld, through many centuries of what we too often self-complacently call unenlightened times;—but which were times, most assuredly, when the spirit of manhood was far more profoundly felt, more widely diffused, and more nobly vindicated, than it is in our own vainglorious age.

While the *responsible* system was thoroughly maintained, it was thoroughly efficient. That efficiency has become lessened solely through the operation of the causes already noticed;

through the carefully-designed weakening, in so many of the connected parts of our Institutions, of the sense of practical responsibility in men, as regards their attention to and fulfilment of their local duties; and through the encouragement given to that spirit of mere selfishness and *material* gratification which is content to let the fulfilment of all such duties be commuted for, and handed over to functionaries.*

It would not be difficult to point out, in detail, to what circumstances it is that any existing inefficiency in the constabulary arrangements, in some places, is to be ascribed. Too much intermeddling from the Home Office has been allowed to be gradually usurped. The due course of the Law as to ordinary and personal responsibility has been checked, and ignorantly or insidiously stopped. The constantly-felt relation between the local managers of the police and the public has been too slightly maintained. Those immediately concerned have thus been curtailed, both in that ever-present sense of responsibility, and in that active opportunity of exercising it, which formerly proved so beneficial. But, in addition to this, the fatal mistake has been made of letting the *penal responsibility* of every place, for every breach of the peace happening within it, fall into disuse. Innovations were first made in different parts of the system, which weakened its efficiency. Hence, as usual, grew excuse for further innovations: till the constabulary of England is in the certain and speedy road to becoming, instead of the mark and mainstay of the independence and public spirit of the Land, no other than such as the Police of Continental nations is; instead of the faithful fulfiller of the instructions of responsible local control,—and therefore the exact maintainer of the public peace—the blind and servile instrument of the purposes of a centralized dictation, and of an all-spread political surveillance.

It has already been seen that the Constable was formerly the principal Parish Officer. “The Parish,” says Selden, “makes the Constable, and when the Constable is made, he governs the Parish.”† The important functions, in civil and military, social and judicial affairs, of the Provost and four—the *provost* is but another word for *constable*—have been already seen in several illustrative instances given, in the first Chapter,

* See before, pp. 5–8 *note*.

† *Table-Talk*; at word “*People*.” The mode in which the above language is there used, gives great additional force to its meaning.

to show the secular character of *the Parish*. Throughout, we find the Parish recognized and dealt with as an integer of the State, the Constable being its head. The fact of having a Constable has always been, indeed, the necessary incident of a true Parish or Vill.*

Thus much the extraordinary changes that have taken place in our constabulary system, make it necessary to say prefatory to any intelligible sketch of the history of the office.

For it must be borne in mind that the position of the "Constable" is not the same as that of the "Policeman." The words represent totally different ideas. The former is the elected officer, chosen by men who are themselves mutually responsible, in order to give, in his turn, for a term, an immediate attention, which all cannot constantly give, to the matters connected with this responsibility. The latter is a mere machine of repression, set over men to control and watch them, by some external and irresponsible authority. The English language has no word to express the latter idea. When, therefore, the revolutionary system began in England, the term of a foreign and despotic system had to be imported, together with the new system itself. Hence, alone, "Police."

It has already been shown, in the last Chapter, that the functions of the parish are exercised either immediately, or through officers specially charged therewith. An instance was cited, illustrating this very matter of the Constabulary. Every man is liable to the duties involved in keeping the peace, without any special warrant. But, as all cannot be always on the watch, the men of every place have always "made choice of one man amongst themselves, to speak and to do in the name of them all;"† to superintend and see to the daily method and fact of maintaining the common safety; and to take special measures to the same end, when any extraordinary event might make this necessary. When he raised the hue and cry, all were originally, while population was thin, bound immediately to become personally active. If the man they had thus chosen were neglectful, and a crime were committed, and the doer of it

* See before, p. 16, note ‡. So Chief-Justice Hale remarks:—"One parish may contain three villis: the parish of A. may contain the villis of A. B. and C.: *that is*, when there are distinct constables in every one of them: but if the constable of A. doth run through the whole, then is the whole but one vill in law."—Waldron *v.* Roscarriot, 1 Modern Rep. 78.

† Lambard's 'Duties of Constables,' p. 8.

remained undiscovered, all were held responsible. They took care, therefore, to choose good men.* As, though one man must be at the head, one alone would rarely be enough for the public safety, four or more were always appointed to be constantly under his control. Thus we have the "Provost and *four*" in the quotations already made.

And, whatever experiments may be attempted, and theoretical devices put forth, by those ignorant of the spirit of our Institutions and unobservant of human nature, an intelligent responsibility must always be the very essence of a sound and efficient constabulary;—the direct mutual responsibility, in one form or other, of every member of the local community. If good and responsible men are selected for the special duties, the sense of responsibility will urge the rest to a vigilant attention to the superintendence of the duties and proceedings of these; and this superintendence should, for practical convenience, be directly entrusted, under the circumstance of the large increase of population in modern times, to a Body chosen out of the whole for the purpose. The whole of the principle of responsibility is, therefore, quite as practical in our time as it ever was. If the public safety is to be regarded, this principle will have to be resorted to again, so soon as men shall cease to deal with the most important questions in a merely empirical manner, and shall be able to view and grapple with them in a comprehensive and statesmanlike spirit. For in no country are life and property so insecure as in those where the State control of the Police is most complete.

The actual position of the Parish Constable, very liable to be misapprehended through modern legislation, was thus one of much trust and confidence. It has already been seen that the name of Constable formerly took precedence of that of Churchwarden in Parish affairs. He long ranked as the first man of the Parish.

The Shire, and the Sheriff as its head, is, at Common Law, responsible for the peace of the whole Shire; the Hundred, and the "Chief" or "High" Constable as its Head, for that of the Hundred; and the Parish, and the "Petty" Constable as its Head, by whatever name he may be called (tythingman, bors-holder, borrowhead, headborough, chief pledge, or provost), for

* See an admirable description in 8 Coke's Reports, p. 41, of the qualifications, and the reasons for them, essential to a Constable.

that of the Parish. All these officers were formerly elective. Having now to do with no other than the Parish, it needs only to be said that the office and authority of the "High" Constable is, within the Hundred, pretty much the same as that of the "Petty" constable (as he is called) within his parish; and that, for a variety of public purposes, the High Constable of the Hundred has always been the medium through which communications have been received, and business transacted, as between the State and the Parishes.

The term "Petty" constable was applied to the chief constable of the Parish, in contradistinction to the High Constable of the Hundred. Its significance is territorial, not personal or official. Within the Parish he has always had sole authority, and he was always the sole head of the peace officers there.*

Nothing can be more incorrect and untrue than to pretend,

* The following quotations will be found instructive:—"There are Constables of the Hundred, commonly called Chief Constables; so named because constables of towns [Parishes] are called *petit* Constables. These Constables of Hundreds were created by the statute of 13 Edw. I., and their authority limited to five things. 1. To make the view of armour. 2. To present, before Justices assigned, such defaults as they do see in the country about armour. 3. To present defaults of suits of tourns. 4. Of Highways. 5. To present all such as lodge strangers in uplandish towns, for whom they will not answer. Divers and many Acts of Parliament have given the chief Constable and petty Constable more authority and power than originally they had, which hath been well collected by others. For *no officer that is constituted by Act of Parliament hath more authority than the Act that creates him*, or some subsequent Act of Parliament doth give him; for he cannot prescribe, as the officer by the Common Law may. *Nota, the petit constable was an officer by the Common Law.*"—Coke, 4 Inst. 267. And see Lord Kenyon, C. J., in *James v. Green*, 6 Term Reports, 232.

"As for the office of the High Constable, the original of that is yet more obscure; for though the High Constable's authority hath the more ample circuit, he being over the Hundred, and the petie constable over the Village yet I doe not find that the petie constable is subordinate to the High Constable, or to be ordered or commanded by him: and therefore, I doubt, the High Constable was not *ab origine*; but that, when the businesse of the country increased, [and] the authority of the Justices of peace was enlarged by divers Statutes, then, for conveniencie sake, the office of High Constable grew in use, for the receiving of the commands and precepts from the Justices of peace, and distributing them to the petie constables; and in token of this, the election of High Constable in most parts of the kingdom is by the appointment of the Justices of Peace, whereas the election of the petie constable is by the people. . . . The petie constables in townes [parishes] ought to be of the better sort of resiants in the said towne, save that they ought not to bee aged, or sickly, but men of able bodies, in respect of the keeping watch and toyle of their place; neither ought they to be in any man's livery."—Lord Bacon's 'Cases of Treason,' chap. 19.

as has been ignorantly, or designedly, done, that there was, under the old system, a want of uniformity in means of action, and imperfect facilities of intercommunication. Both of these were provided for with peculiar care and exactness, and were, moreover, strictly enforced. A complete machinery of action for intercommunication, and for securing the constant fulfilment of it,* exists at Common Law. The Statute of Winchester, and others, required the republication of this;† which was, later, adapted to circumstances. It was fully efficient.‡ These means have become inefficient, where such inefficiency has occurred, solely owing to the old system of responsibility having been departed from.§

It has been said that every place was held responsible for the keeping of the peace within it. To this responsibility every man was bound. All were annually thus personally bound in “peacepledge.”|| The Court Leet is always accom-

* See, after, p. 128. See also, Chap. VII. Sec. 2, where this subject will be more fully entered into, with particular practical reference to the subject of *Public Prosecutors*.

† First Statute of Westminster (3 Edw. I. c. 9); Statute of Winchester (13 Edw. I.); 28 Edw. III. c. 11.

‡ See Lord Coke in Second Inst. p. 73.

§ See 27 Eliz. c. 13. In this Statute the practical substance of the Law is so well put, briefly, that it will be useful to quote it,—the more so as the very ground of the Statute itself is declared to be, ‘the frequency of the Responsibility in question being put in action; an important fact in the History of this subject, and as illustrative of the long maintenance of the Principle.—’ “Whereas by two ancient Statutes, the one made in the Parliament holden at Winchester in the thirteenth year of the reign of King Edward the First, and the other in the eight-and-twentieth year of the reign of King Edward the Third, it was, for the better repressing of robberies and felonies, amongst other things enacted to this effect:—that, if the country do not answer for the *Bodies of such malefactors*, that then the pain should be such, that is to wit, that the people dwelling in the country shall be answerable for the Robberies done, and the Damages; so that the whole Hundred where the robbery shall be done, with the franchises which are within the precinct of the same Hundred, shall answer the Robberies done; etc.” The Act proceeds to point out some practical methods of enforcing the responsibility. The mere love of tinkering, it would seem, led to the repeal of the old Law on this matter, and to the restriction of the liability to damage done, in certain cases, by riotous and tumultuous assemblies; (see 7 & 8 Geo. IV. caps. 27 and 31;) a restriction without meaning or reason; and the empiricism of which has been, certainly, finely illustrated by the *going back again*, so far as to include certain other cases, in later Acts. See 2 & 3 Wm. IV. c. 72, and 17 & 18 Vict. c. 104, s. 477; also after, p. 132.

|| “It has been already frequently remarked that the whole Constitutional

panied by the title "view of frankpledge" (a word merely corrupted from the old Saxon word for *peace-pledge*). Thus mutually bound, they chose one, together with his subordinates, to act for them on all ordinary occasions, and to summon them whenever occasions touching the Public Peace required it. It has been already seen that the "Provost and four" of each Parish are often named. The name of the Head officer for this purpose differed in different places; his functions, however, remaining the same. No irresponsible or external interference was allowed, *except to enforce the obligations** arising out of the mutual responsibility. Those whose property and peace were concerned, and who were responsible for every breach of the peace affecting any and every one of their number, chose all their own officers, and had the strongest inducement to take due care in their choice. When the *responsibility* was made to dwindle away, as a consequence of other innovations, the efficiency of the public service necessarily suffered. Care was no longer kept alive to the appointment of the most efficient officers. Presently, an irresponsible and external interference, wholly contrary to the spirit of the Constitution and to sound principle, was introduced, which lessened still more the disposition of men to trouble themselves about the matter. The natural tendency has been, at every step of such innovations, that the office of Parish constable should fall into less

System of this country rests on the idea of mutuality and responsibility. The ancient, and most efficient, police system had, like every other part of the system, its foundations in this idea. The details, suited to a particular time, are unimportant. The important practical principle, ever applicable, is, that every local body, whether Hundred, Borough, or otherwise, is in the nature of a mutual assurance society. Every man was bound, at a certain age, to take the *peace-pledge*, and so became a member of the Associated Body,—one of the mutual pledges for the good behaviour of the whole Body, and of every individual member of it. The efficiency resulting from such a system is self-evident. Where every man is jointly responsible for any misdemeanour committed by any member of the district, all are stimulated to the greatest vigilance in maintaining the well-being and good-ordering of that district: while, on the other hand, the knowledge that such vigilance exists, is the surest check to the growth and spread of crime. This is well illustrated by the known fact that, where Societies for the prosecution of felons exist, the knowledge of the certainty of immediate and active prosecution is a very effectual deterrer, and the members of such Societies are rarely subject to any outrage."—'Local Self-Government and Centralization,' pp. 369, 370. See also 'Government by Commissions,' p. 243, etc.

* See before, p. 46, and after, Chap. VII. Sec. 2.

and less efficient (only because more *manageable*) hands; and thus the *system*, utterly emasculated, has lost public confidence. But the inefficiency does not belong to the system. It belongs to the *corruptions* of it, introduced under the name and pretence of amendments and reforms. It affords but another illustration of that important remark of Lord Coke, founded upon a sound knowledge of human nature and the history of all human Institutions, that when any "jurisdiction is fettered with many limitations, its authority by little and little vanishes."*

The Parish Constables were formerly, and until a very short time ago, usually chosen in the Court Leet,—the local criminal court within each parish.† They were, in many places, however, chosen at the Vestry Meeting; and, even where not so, their attendance at Vestry Meetings was required, as will hereafter be illustrated.‡ But the Court Leet was clearly the original, as it was obviously the more proper and consistent place, for choosing them. This mode was only abolished so lately as the Statute 5 & 6 Vict. c. 109, s. 21 (A.D. 1842), which itself, indeed, excepts from abolition such functions as are unconnected with the preservation of the peace. For such purposes, therefore, constables must still be appointed as before.

The whole subject of the appointment of Parish Constables was dealt with by the Statute just named (5 & 6 Vict. c. 109).§ This Statute was, however, unfortunately framed without any regard to the fundamental idea of a true constabulary; either in respect to the responsibility of every Place for the due keeping of watch and ward within it, or in respect to the responsibility of officers to those whom the exercise of their functions concerns. Like most of our modern legislation, this Act was framed upon the Principle of distrust of the people, instead of upon a broad and statesmanlike confidence in, and therefore, appeal to, their good sense and consciousness of moral and social responsibility. Justices of the Peace are, practically, in-

* 2 Inst. 540.

† The words of Sir Thomas Smith are instructive on the relations between the Leet and the Parish. "Constables," says he, "are commonly made and sworn at the *Leets*,—chosen thereto by the homage: and they keep that office [though usually an annual one] sometimes two, three, or four years, more or less, as the *Parish* doth agree."—The Commonwealth of England (1621), Book II. cap. 25.

‡ See Chap. VII. Sec. 12.

§ See also 13 Vict. c. 20.

vested by this Act, for the first time in the History and Institutions of England, with irresponsible power in the appointment of constables. They are required to issue, within the first seven days of February in every year, a precept to the overseers of every parish, requiring them to make out and return, before the 24th of March, a list of what the Justices may please to call a "competent number" of men within their parishes, qualified* to serve as constables. The Overseers are then required to summon a vestry to make out this list. Between the 24th March and 9th April, the same Justices are to hold a special petty sessions, to choose, out of the lists so returned, the constables they please. It is clear that this scheme is a mere transparent device for keeping up the show and name of choice by the Parish, without the reality. In point of fact, it entirely divests the people in every parish of any voice or interest in the matter. Care is usually taken that the "competent number" required to be returned, is enormously in excess of the actual number to be appointed. Thus, though the overseers submit their list to the vestry, there are no means of securing the appointment of those known to be the properest men. All sense of part or interest in the important practical affair of what concerns the maintenance of the peace in their neighbourhood, is thus taken away from the inhabitants by this truly revolutionary system. It is made impossible. No wonder that the Parish Constabulary has become more and more unsatisfactory and inefficient. Its original and sound character, as one of the results and illustrations of the true action of Institutions of Local Self-Government, is entirely gone. The men are of the place; and that is all.

It will presently be seen that the earlier Lighting and Watching Act (3 & 4 Wm. IV. c. 90) recognized powers in a different and more constitutional direction. Under that Act, many parishes have adopted a special system of watch and ward, which is under the control of their own elected representatives. It remains, however, unless the place contains 15,000 in popu-

* The qualification consists in being resident ratepayers on a rental of at and above £4 a year, and being between twenty-five and fifty-five years old. There is, as usual, a long string of exceptions. It does not appear that the excepted persons are content to do with less guarding than others, though they evade their own share of full liability in the matter. See 5 & 6 Vict. c. 109, ss. 5 and 6.

lation, in the discretion of the functionaries under the new County "Police" system whether, and how long, they shall be let maintain this mode of action.* But this is not so as to the Parish Constables. Though the County Constabulary Act of 3 & 4 Vict. c. 88 (s. 16), gave the making of the list for Parish Constables to the irresponsible "Chief Constable," the 5 & 6 Vict. c. 109 entirely overrides that enactment. On the other hand, while the Lighting and Watching Act is in force in any place, the Parish Constables Act does not apply there.†

In 1856 an Act was passed (19 & 20 Vict. c. 69) which makes the adoption of the County Police system compulsory in every county. But this Act does not repeal the Parish Constables Act (5 & 6 Vict. c. 109), or, theoretically, (of course it will *practically*, in many ways) interfere with it. The Parish Constables will remain; but County Constables will exist in every county, who will have concurrent jurisdiction with the Parish Constables;‡ but with these essential differences,—that the County Constables are permanent, paid, and entirely under the control of the Chief Constable of the County, and he can distribute them in any part of the county he pleases,—while the Parish Constables, though also subject to the authority of the Chief Constable, are annually appointed, are *unpaid*, and are not bound, and cannot be compelled, to act beyond the limits of the Parish for which they are appointed, without the special warrant of a justice of the peace.§

There are several purposes for which Parish constables remain essential; and others for which it is always desirable that there should be trustworthy persons able to act in the capacity of constables upon occasion, within the Parish, under the direction of the other Parish Officers. It will, probably, be better for the Parish Officers to avail themselves of the power contained in the County Constabulary Act (section 19), and

* 3 & 4 Vict. c. 88, s. 20; 19 & 20 Vict. c. 69, s. 19.

† 5 & 6 Vict. c. 109, s. 21.

‡ See 2 & 3 Vict. c. 93, s. 8. "The 8th sec. of 2 & 3 Vict. c. 93, in effect puts the constables appointed under that Act in the same position as Parish Constables" (*R. v. Chelmsford*, 5 Q. B. 66); that is, in giving them *concurrent* jurisdiction, not *exclusive*. The same concurrent jurisdiction will exist even in Boroughs. 19 & 20 Vict. c. 69, s. 6.

§ 5 & 6 Vict. c. 109, s. 15. Compare this section with sec. 25 of 2 & 3 Vict. c. 93.

get the Parish Beadel appointed constable for the latter purposes, rather than leave the assuredness of finding a fit and trustworthy man to the accident of other modes of appointment. It is not apprehended that there will be ever any difficulty in getting the Chief Constable to appoint the Beadel to be a Constable, as he is empowered to do by this Act, upon application being made to him.*

The Vestry of any parish can, under the Act of 5 & 6 Vict. c. 109, determine that there shall be paid constables in the parish; and fix the salary. But it is discretionary with the justices to say whether that salary is or not sufficient: and, even if it be admitted to be so, the Vestry have no more voice in the appointment of these Constables, though paid out of their own pockets, than has been already named in the case of others. It is not probable, however, that, since the County Police Act of 1856, this power will ever be exercised.

The justices, also, and not the parish, are to settle the fees to which the Constables shall be entitled for the discharge of their several duties.†

Formerly, the inhabitants of every place, and the constables chosen by them, were held fully responsible for every crime committed within their Bounds, although the criminal had escaped beyond those Bounds. The necessary means for action and intercommunication were prompt and efficient, without any intervening machinery. No justice's warrant was necessary to enable the constable to raise the "hue and cry."‡ It formed

* Such appointment is good for all purposes, and the application need not state any special reasons. It is enough if it is made by the Churchwardens and Overseers or either of them, and states it to be necessary in order to enable them the better to fulfil their duties. See *Allen v. Pierce*, 24 Law Journal, Exch. 9; which, though under 2 & 3 Vict. c. 47, s. 8, applies equally to the cases now under consideration.

† 5 & 6 Vict. c. 109, s. 17; 13 Vict. c. 20, s. 2.

‡ For "hue and cry," it is properly remarked by Hale, "was part of the law before Justices of the Peace were first instituted." (*Pleas of the Crown*, vol. ii. p. 99.)

"Hue and cry signifieth the pursuit of one having committed felony by the Highway; and if the party robb'd, or any in the company of one murdered or robb'd, come to the Constable of the next Town, and will him to raise Hue and Cry, or to make pursuit after the offender, describing the Party, and shewing (as near as he can) which way he is gone; the Constable ought forthwith to call upon the Parish for aid, in seeking the felon: And if he be not found there, to give the next Constable warning, and he the next, until the Offender be apprehended, or at least until he be thus

a part of his imperative and responsible duty. Practically, the modern system of raising the "hue and cry" was, that the constable of one place informed the constables of all the adjoining places, of the facts and circumstances; and they did the same to those adjoining them, until those implicated were apprehended. If any constable failed, where need was, to raise and follow up the hue and cry, he was heavily punishable. And this responsibility and punishment he could not escape. The periodical Inquiries inevitably came, and exposed every default.*

Under the 5 & 6 Vict. c. 109, however, no constable is bound to bestir himself as to anything outside his own parish, without the special warrant of a justice of the peace;—a very complete check on that intercommunication of efficient activity often so necessary, and an ingenious and successful device for getting up a case for further interference. The whole system of periodical searching Inquiries has, unfortunately, been succeeded in being stifled out of practical existence, in this as in other matters.†

Though an oath of office is usually administered to Constables, this is not needed in order to enable them to act. The same rule as applies to Churchwardens applies to Constables, in this respect.‡

pursued to the seaside. The Constables and Officers of every town, to which Hue and Cry shall come, ought to search in all suspected houses and places within their limits: and as well the officers, as all other persons which shall pursue the Hue and Cry, may attach and stay all such persons as in their search and pursuit they shall find to be suspicious, and thereupon shall carry them before some Justice of Peace of the County where they are taken, to be examined where they were at the time of the felony committed; and if any default be in the officers, they may be fined by the Justices for their neglect."—'The Complete Constable' (1708), p. 23.

"*The life of Hue and Cry is fresh suit*,"—that is, the immediate and prompt following of it up. Coke, 3 Inst. p. 117.

* On the subject of *Hue and Cry*,—very interesting in itself, and of great practical importance to him who would understand thoroughly the spirit of sound Institutions for maintaining the public welfare,—see further, Coke's 3rd Inst. p. 116; Hale's Pleas of the Crown, vol. ii. p. 99, etc. and 298; etc. And see, *per contra*, 7 & 8 Geo. IV. c. 27. As to the Inquiries, see after, Chap. VII. Sec. 2, and Chap. IX.

† But see before, p. 23, note †.

‡ See 5 & 6 Vict. c. 109, s. 12; *R. v. Corfe Mullen*, 1 B. and Ad. 219; and 2 Hawkins's Pleas of the Crown, cap. 10, sec. 47. See as to Churchwardens, before, p. 91.

It is the duty of the constable to apprehend offenders taken in the fact, or on sustainable presumption, or on a justice's warrant. He has powers and duties as to the licensing and inspecting of Ale and Beer houses.* Vagrants,† and unlicensed hawkers‡ also fall under his immediate cognizance. But matters of this sort will probably hereafter be assigned to the exclusive share of constables appointed under the County Police Act. There is no doubt that all matters of arrest and criminal procedure will be so. It is therefore unnecessary to detail such duties here. It will remain, however, the duty of the *parish* constable, upon receiving the coroner's precept, to summon the coroner's jury; a duty usually and properly fulfilled by the Parish Beadel in his character of Constable. Where there is no poor-rate, it is the duty of the constable of the place to make and levy the sum assessed for county rate, on the warrant of the constable of the hundred.§ The constable of the place must, moreover, administer the oath to the appraisers sworn to appraise goods sold under distress for rent.|| It is also his duty to billet soldiers in such houses and in such manner as are expressly named and allowed in the annual Mutiny Act. This has been shown to be a duty of great antiquity.¶ Under the same Act, he must find the carriages needed by marching troops. He may have duties cast on him under the Militia Acts.** It is his duty to prosecute gaming and other disorderly houses.†† He must apprehend any wandering Lunatics.‡‡ He is bound, by Statute, to give and find assistance in cases of wreck.§§ He is, further, to execute the lawful warrants of Justices of the Peace. He must attend all Inquests.

The constables are bound to make out an account every three months, and within fourteen days after going out of office, to

* 9 Geo. IV. c. 61, ss. 2 and 22; and 4 & 5 Wm. IV. c. 85, s. 7.

† 5 Geo. IV. c. 83, ss. 6, 7, 8, 11, 12, 13.

‡ 50 Geo. III. c. 4, ss. 20, 21.

§ 15 & 16 Vict. c. 81, s. 5

|| The constable of the adjoining Parish will not be sufficient for this purpose. *Avenell v. Croker*, Moody and Malkin's Rep. 172.

¶ Before, p. 45.

** 42 Geo. III. c. 90, and 15 & 16 Vict. c. 50; 16 & 17 Vict. c. 133.

†† 25 Geo. III. c. 36; 58 Geo. III. c. 70.

‡‡ 16 & 17 Vict. c. 97, s. 68.

§§ 12 Anne, St. 2, c. 18, s. 1, and 26 Geo. II. c. 19, s. 13; which are now repealed, and not necessarily interfered with, by 17 & 18 Vict. c. 104, s. 439-442.

the overseers. The latter must lay these accounts before a parish meeting. If approved, the overseer pays the amount out of the Poor Rate. If not approved, the constable may appeal to a justice; who, though entirely irresponsible, is empowered to settle and determine the same at his discretion. An appeal lies to the Justices at Quarter Sessions. The constable must show that the charges are for what was clearly the business of the Parish.*

Constables are protected both by Common Law and Statute, in the discharge of their duties; and also from danger of vexatious actions for things done by them in the honest and faithful exercise of their functions.† This protection is clearly essential: but the system adopted by late legislation is neither so efficient in itself, nor so just to the public, as that which naturally arises from the system of responsible watch and ward which has been mentioned. Under the latter, the moral sense of responsibility is kept constantly alive in all parties. This itself stimulates the constable to the zealous fulfilment of his real duties; and at the same time always maintains an efficient check, equally against the abuse and the neglect by him of the functions of his office.

One system of constabulary still exists in England, which is a direct and valuable remain of the ancient universal system of the responsibility of every inhabitant of every neighbourhood for the watch and ward, the peace and safety, of that neighbourhood. This is the system of what are now called "Special Constables." In every case of emergency, of either actual or reasonably apprehended tumult, or otherwise, by which the public peace is endangered, any or all of the householders or other persons, not specially exempted, residing in any parish or place, may be called on to act as special constables. The emergency is, however, now left to the discretion of any two or more justices of the peace to determine on, instead of to the chosen and responsible Head officer of the place. To the same discretion are also left the number and appointment themselves

* 18 Geo. III. c. 19. See *R. v. Bird*, 2 Barnewall and Alderson 522, and *R. v. Saville*, 5 *ib.* 180. If a constable of the County force is allowed, by the Parish authorities, to deal with the Vagrants in a Parish, the expenses will have to be paid by the Parish, and not by the County. See *R. v. Chelmsford*, 5 Queen's Bench Reports 66.

† 7 Jac. I. c. 5; 21 Jac. I. c. 12; 24 Geo. II. c. 44; 7 Geo. IV. c. 64, s. 23; 9 Geo. IV. c. 31, s. 25; 5 & 6 Vict. c. 97.

of the special constables, and the time and manner in which they are to act. Even persons otherwise exempt may be called on to serve as special constables, on the order of the Secretary of State. The duties and powers of Special Constables thus appointed, are the same (limited only by their special orders of appointment) as those of ordinary constables.*

The evils that have resulted from departing from the sound principle of ever-present and certain responsibility, in all matters of watch and ward, have, in one instance, already forced a partial return to the constitutional and sound system. The fact is highly instructive. By Stat. 1 & 2 Vict. c. 80 it is enacted that, wherever the necessity for the appointment of special constables arises through the behaviour of those employed on railroads, canals, and other public works, the justices may make an order on the treasurer of the Company whose works were the scene or occasion of the tumult or otherwise, for the payment of allowances for the trouble, loss of time, and expenses, of the special constables. The mischief in this Act is, that a discretion is given to the justices in the matter, instead of the repayment being absolute and inevitable. In this case, as in all others, the *certainly* and inevitableness of the result are what is needed, in order that the true sense of responsibility may exist; and that thus that watchfulness and care, and that cherishing of mutual sympathy, consideration, and good feeling may be ensured, by which such scenes, and the consequent necessity for invoking the powers of the Law and so creating public inconvenience, shall be avoided. Every uncertainty and chance of escaping the responsibility, is only an encouragement to a lottery, the leaving open any chance of gain in which affords a premium to carelessness and neglect of duty.

In other cases, allowances are to be made to special constables out of the County Rate.

It is not within the purpose of this work to treat of that which is beyond the control, or share of the control, of the Parish. It has been already stated that the County Constabulary Acts† do not supersede, though they cannot but materially affect, the system of parish constables. Under these Acts all Parish Constables are to be subject to the authority

* The Stat. 1 & 2 Wm. IV. c. 41 is the Act regulating the appointment of Special Constables. See also 5 & 6 Wm. IV. c. 43, and 1 & 2 Vict. c. 80.

† 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 69.

of the Chief Constable : while the latter is the appointer of all county constables ; which last also hold office at his pleasure*. The Inhabitants themselves are put altogether aside. Though formerly they entirely and efficiently managed all these matters themselves, they are not now considered as fit even to form the slightest opinion upon them ; nor safe to be allowed to exercise thought at all, as to how or by whom their persons and property may be best protected, or the public peace and good order maintained ! Such is the progress of civilization, knowledge, enlightenment, and freedom in our time.

By a late Act,† permanent Constables may be specially appointed for, and attached to, certain canals and navigable rivers, the expense to be borne by the company of proprietors.

The constables for Boroughs are at present appointed and regulated under the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76.‡ This naturally supersedes the parochial system wherever it is applied. Forming a subject distinct from the parochial system, it does not fall within the scope of the present work to treat of it here. It is sufficient to say, that the essential basis and idea of a Borough are, the adoption by its inhabitants, with their own consent, of a special system of self-government, adapted to their special circumstances, but taking them out of the application of the simpler Common Law system and methods which elsewhere apply. The practical application of this principle, too, has, however, been tampered with in our time. But it does not belong to the present subject to enter on that topic, more than to say that the anomalies that have hence arisen leave the action of the Parish unsuperseded, and requiring as much care as ever, on several important matters, even where Corporate Boroughs exist.

* See before, p. 127.

† 3 & 4 Vict. c. 50.

‡ See also 11 & 12 Vict. c. 14.

SECTION IV.

INSPECTORS OF LIGHTING AND WATCHING.

IT has been already shown that the inhabitants of any Parish may, at a meeting held after due notice and summons, adopt any ordinance or bye-law they please, in order to carry out any special purpose for the common good of the Parish. As there are many important purposes which, from time to time, may and do become necessary, we find officers existing in many Parishes to carry them out. Some of these are of such importance that the mode of dealing in respect to them, having had its utility proved in the Parishes which first devised and practised it, as in the case of Surveyors of Highways, has been embodied into declaratory Statutes. Such Statutes, however, give no new powers. What they do, is simply *declarative* of powers already inherently existing in every Parish. If they attempt to impose *restrictions*, instead of being simply declarative of powers, they depart from what ought to be the first and fundamental principle of all such legislation. The use and value of such legislation is, that it is practically suggestive. If wisely considered, and framed by those having practical experience, it may thus be of the greatest service. It will be, not theoretical or experimental, but a right using of the experience of one place to help all other places similarly circumstanced. It will point the path to those desiring, in different places, to do what shall be for the common good of their neighbourhoods. These will thus—availing themselves of the proved experience of others—be the more readily enabled to take that course which has been found simplest and most available. It is obvious that the free opportunity should always be left distinctly open for any such modifications as the special circumstances of any neighbourhood may make desirable. The mischief in our time is, that doctrinairism has become the guide, and its accompanying indolence the habit, of modern legislators: hence modern legislation too generally seeks to be theoretically dictative, instead of simply and practically suggestive.

It necessarily follows, as no one shape will fit every form or change of circumstance,—and as men will always think the more actively and usefully, the more the responsibility of thinking for themselves is thrown upon them,—that such legislation has too often an absolutely injurious instead of a beneficial tendency, while contingencies that from time to time arise are left unprovided for ; and only doubt and inefficiency are thus begotten.*

One of the most useful measures of the suggestive class, and one which, though by no means free from the faults hinted at, is disfigured by fewer of them than many later Acts, is the Act of 3 & 4 William IV. c. 90. Its object is “to make provision for the lighting and watching of Parishes in England and Wales.” This Act may, according to option of those using it, be put into operation in any parish, or in any defined part of any parish ; and either as to both, or as to one only, of the purposes named in it. The determination as to adopting it must be taken in the regular and constitutional way ; namely, after full notice and summons,† and at an open meeting of

* The following statesmanlike opinions of Charles James Fox, recorded in Lord Grey’s speech in 1810, are peculiarly appropriate to this subject. Unhappily, Mr. Fox’s professed political followers have, when in power, entirely set at naught what he so strongly felt and taught. They have become the very incarnation of *doctrinairism*, and have shown themselves unable to deal with any subject except in the spirit of the pedantic *Doctinaire* :—

“Never, my Lords, can I forget his (Mr. Fox’s) powerful observations, when, in his place in Parliament, he stated his conviction of the absolute impossibility of providing for all the variety of human events by any previous speculative plans : for, said he, I think that if a number of the wisest, ablest, and most virtuous men that ever adorned and improved human life, were collected together, and seated round a table, to devise, *à priori*, a constitution for a state, it is my persuasion that, notwithstanding all their ability and virtue, they would not succeed in adapting a system to the purposes required, but must necessarily leave it to be fitted by great alterations in the practice and many deviations from the original design. And this opinion he was wont to illustrate by the familiar but apt example of building a house, which, notwithstanding all the study and consideration previously bestowed upon the plan, was never yet known to supply every want, or to provide all the accommodations which, in the subsequent occupation of it, were found to be necessary. Nay, he used to remark, that however fine to look at, a regular paper plan might be, no house was so commodious and so habitable as one which was built from time to time, piecemeal, and without any regular design.”—Lord John Russell on the English Constitution, p. 272.

† See before, pp. 50, 53.

the Parish, specially summoned to consider it, by the Churchwardens of the Parish. And the Churchwardens are required, and can be compelled by mandamus, to summon such meeting, within ten days, on the requisition of any three or more ratepayers in any Parish.* To prevent trickery, however, if rejected once, its adoption cannot be re-proposed under a year's time.† This may be thought too long a restriction, but the principle is right.

No other persons than the actual Churchwardens of the secular Parish, or equivalent Common Law Division of a Parish,‡ can summon such a meeting. It is necessary to recall attention to this point, because the nominal Churchwardens of Ecclesiastical Districts have sometimes unlawfully assumed to act in this matter as Churchwardens at Common Law alone can do.§

At these Meetings, the Vote must be taken in the constitutional manner. There can be no Poll, unless demanded in writing by five Ratepayers.|| Nor can any man shelter himself under the cowardice of a pretended neutrality. Every honest man is bound, in a free country, to make himself master of the merits of what concerns himself and his neighbourhood, so as to have an opinion; and he is further bound to have the boldness to express that opinion. At these meetings every man's vote must be counted.¶ The Act must be determined to be adopted by a majority of two-thirds of those present.**

If the Act is adopted, Inspectors are to be appointed, either at the meeting at which the Act is adopted, or at an adjourned one.†† The more convenient course will always be, first to determine on the adoption of the Act; and afterwards, in a separate meeting, adjourned and specially summoned, to choose the necessary officers. Thus, proper care and consideration are

* 3 & 4 Wm. IV. c. 90, s. 5. † *Ib.*, sec. 16. ‡ See before, p. 34.

§ See before, pp. 38, 42, 65, 66 *note*, 97 *note*; and see *R. v. Staffordshire*, *Journal Rep.*, M. C., 337.

|| 3 & 4 Wm. IV. c. 90, s. 9. See before, p. 57 and p. 60. The right of adjournment is unaffected. See Sec. 7.

¶ *R. v. Eynsham*, 18 *Law Journal Rep.*, Q. B., 210.

** But, very properly, (see before, pp. 63, 64) no one is able to vote unless he have been a ratepayer for a *whole year*, and have paid all rates made, except such as have become due within six months. Sec. 14.

†† *Ib.*, sec. 8, etc.

more likely to be secured. Thus, also, no charge of surprise can be made : which may be justly made if, after the discussion on the adoption of the new system, the appointment of officers follows, without interval, in hot haste.

The Parish, or part of a Parish, adopting the Act, fixes, each year, at an annual meeting on this special subject, the amount of rate to be levied.* The Parish also determines the number of Inspectors ; excepting that, by a very useless and unwise restriction (of the class above alluded to), the Act fixes the number within the limits of from twelve to three. The Common Law right and power of every Parish to appoint officers, servants, and committees, are open. That right and power cannot be fettered by such enactments. The clauses of this Act are merely suggestive. If, however, the Act is specifically adopted, these restrictions will, of course, be adopted too.

It is curious that, in reference to these Inspectors, this Act, probably without its authors being aware of it, returns back, to a considerable extent, to the practice as found in the Highway Act of Philip and Mary. The Inspectors have not an independent standing. Though possessed of no small amount of power and discretion, they must always be set in motion by the Churchwardens : they have regularly to give certain notices to the Churchwardens : the Churchwardens are to summon all the annual meetings : and the rates, voted by the inhabitants, are to be got through the Overseers.†

A qualification for Inspector is fixed by this Act.‡ A man must, very properly, be a resident in the parish ; but, in addition to this, he may be the most capable man in the Parish, and yet, if he is not rated to at least £15 a year in the Poor Rate Books, he cannot, according to the wisdom of the framers of this Act, be an Inspector. In country districts this necessarily excludes many who would be highly efficient.

Instead of being appointed for one year, as the almost universal custom has always been as to Parish Officers, these Inspectors are to last for three years, with the vicious and clique-securing device of one-third going out each year. This is one of those devices which seem very specious ; and which

* *Ib.*, sec. 9. On this and all other matters *except* the adoption of the Act, an *actual majority* (and not necessarily a majority of two-thirds), determines. See *Beechey v. Quentery*, 10 Meeson and Welsby, 65.

† Secs. 10, 15, 17, 18, 32-36, etc.

‡ Sec. 17.

has been extensively adopted by modern doctrinaire lawmakers in respect to Town Councils and other local elective Bodies. But it is based upon a fallacy; and is purely mischievous in practice. It involves a direct and fundamental violation of the essence of Representative Institutions.

The pretence is, that continuous experience is thus secured. To this the reply, as an obvious matter of course, as well as of universal experience, is, that out of several, those who have done their duty and are willing to serve again, will certainly always have enough of their number re-elected to ensure the continuous leaven of experience. On the other hand, the sense of inevitable frequent responsibility, will always be an invaluable quickener to the sound discharge of duties which, affecting immediate local affairs, require constant jealous watching. Every fresh election ought to express the spirit of the constituents for the time being. Else, the name of representation is a sham and a delusion. When the constituents can only deal with one-third at a time,—and this, too, by mere rotation, not according to the determination of the electors,—there is no constant certainty of real representation. The name is there, but the reality and spirit are sorely trifled with. In any case of grave question, however decided and strong may be the voice of actual public opinion, there always remains the dead weight of a, for the time, irresponsible clique, which can laugh at the result of every new election. The efforts of the new third are swamped. They have either to assimilate with the clique, or to labour in hopeless disgust against an overwhelming majority of non-representatives. The task is invariably abandoned in despair. The device is a mere piece of that mischievous and self-satisfied *doctrinairism* which, despising conversance with their practical working, would always be tinkering at Institutions according to closet theories. The mischiefs of this device, as already applied, do not commonly make themselves so palpably seen as they do, in fact, actually exist; for its tendency is necessarily repressive. The good sense of men, it is true, often overcomes a part of the mischief. But many cases are continually occurring, in which the results are found grievously to prove how men have been deluded by a name into submitting to a mockery. These always, and from the necessity of the case, occur on critical occasions. At the very times when the true results of free Representation are most needed to show

themselves, the hands of the constituents are found tied by this novel and unconstitutional device. Indignation may be loud ; —but a clique remains the master.

All Parish Elections have always been annual, both at Common Law and by former Statutes.* And such they ought always to be, in order to secure true responsibility and efficient action. The capacity for re-election, of course, always exists.

Into the great vice that marks the so-called elections of Poor Law Guardians, this Act does not fall. The elections of Inspectors under it are to be made in open public meeting, all candidates being thereat openly moved and seconded ; though the vicious delayed polling system has a qualified admission.†

The Inspectors under this Act must meet monthly at the least ; and at each meeting any inhabitant may present any complaint.‡ They must keep minutes of their proceedings ;§ and must lay their accounts annually before an open meeting of the Parish, or of the part of the Parish by which they are appointed.|| They have full powers to appoint all necessary officers and servants ;¶ but no Inspector can hold any office of trust himself, or be concerned, directly or indirectly, in any contract with the Parish.** They can take or purchase any offices or other premises necessary for any of their purposes, or for carrying on any needed works.††

As a part of any Parish may adopt the Act, to all intents and purposes as fully and entirely as the whole may,—in accordance with the old Common Law as to subdivisions where found useful,—so the Inspectors of separate parishes, or parts of separate parishes, adjoining one another, may, on the other hand, unite in action, on joint arrangements entered into between them.‡‡ These should always be formal and in writing. Such arrangements will, however, require much care and consideration ; inasmuch as the ratepayers in each place are annually to fix the

* See pp. 79, 106, 108, 109, 126, 143, 146, and many other places where different offices and bodies are treated of.

† Sec. 9, and before, pp. 57 and 136.

‡ Sec. 22. In all cases of such Bodies, the proper and most convenient course is, to keep a Book, called a “ Presentment Book,” at the office of the Board or Committee, in which any parishioner may enter any complaint. All thus entered will then be considered and settled in the regular course of business at every meeting.

§ Sec. 30.

|| Sec. 19.

¶ Sec. 24.

** Sec. 28.

†† Secs. 24 and 59.

‡‡ Secs. 71, 73, 61.

amount of rate, and they may at any time, after three years from its first adoption, abandon the course of action under the Act, and fix a day on and after which all the functions of the Inspectors shall cease.* A fair spirit of dealing between the parties, and the faithful discharge of their duties by the Inspectors, will however preclude such an event, except under very extraordinary circumstances. That the unquestionable Common Law right of the inhabitants in this respect is recognized in this Act is well. It will be one of the most wholesome suggestions by which Inspectors will be kept constantly alive to the voice of public opinion, and reminded that the honourable position of being chosen by their neighbours to take charge of important matters of common interest, involves in it the necessity of never forgetting that the common good, and not any selfish objects of individuals, is the great end of the Institution of the Parish.

It is necessary to bear in mind that, although the Act may be adopted for the purpose of lighting any Parish or part of a Parish, at the will of the inhabitants, its application has, since its enactment, become restricted in regard to watching. It can no longer be applied, *afresh*, for that purpose in any place. The Act of 2 & 3 Vict. c. 93 took away the power of proceeding under the present Act, in regard to watching, whenever that Act should be applied to any County or Part of a County ;† while an Act of the next year‡ enabled the County to swallow up the Local system, at the mere will of the Chief Constable of the County. The Act of 19 & 20 Vict. c. 69 has, to a certain extent, restrained the exercise of this power. The Chief Constable cannot now move, in regard to places where the population amounts to fifteen thousand, except with the express authority of the Home Secretary, and with previous Notice to the inhabitants of the place sought to be affected.§ Though the Lighting and Watching Act can thus no longer be *freshly* applied to any place for purposes of watching, it may yet remain permanently in force in many of those places which have already adopted it.

The application of the Act remains, however, as open and desirable as ever it was in regard to the Lighting of any Parish or part of a Parish. That application will do away with the

* Sec. 15.

† 3 & 4 Vict. c. 88, s. 20.

‡ Sec. 25.

§ Secs. 18 and 19.

necessity for the costly process of a Local Act in most cases where Lighting is needed. It enables the Watching and Constabulary arrangements of places that have adopted it for those purposes to stand in a very satisfactory and efficient position. It is, indeed, a very great and unconstitutional defect in the County Constabulary Acts, that they interfere at all with the fresh and continued application of this Act so far as relates to Watch and Constabulary; and thus with one of the most important parts, and most efficient means, of sound Local Self-Government.

By an anomalous clause introduced into the Nuisances' Removal Act 1855, in places where there is neither Town Council, Local Board of Health, Trustees or Commissioners, Highway Board, nor Nuisances' Removal Committee, the Inspectors of lighting *and watching*, together with the Surveyors, are to be the *Local Authority* for executing that Act.*

* In reference to this clause, I cannot do better than quote what I have elsewhere said. The extreme rarity of its application makes it undesirable to enlarge on the topic in the text.

"This is one of the alterations, not founded on experience or wise consideration, that was introduced at a late stage of the Bill. The Inspectors of Lighting and Watching have nothing in their functions which has any analogy with the purposes of this Act. They do not execute any of the functions of Surveyors of Highways, as do Commissioners under Local Improvement Acts. The adding the Surveyors of Highways to them,—thus constituting, in fact, a new body,—is an admission that the case is an anomaly. Still, being chosen by the inhabitants, who will hereafter be aware of these added and novel functions, and who will have the opportunity of urging, and joining in, the choice of a Special Committee for the whole place, instead of leaving the matter to such Inspectors, there will not be so much inconvenience as otherwise would happen. It must, however, be remarked, that the Inspectors under the Lighting and Watching Act, can only become recognized as part of the Local Authority when they are Inspectors of *both Lighting and Watching*, not when they are Inspectors of Lighting only, or of Watching only. This is important; and will so much lessen the number of cases to which the clause applies, as materially to lessen, still further, the inconvenience arising from it.

"The Lighting and Watching Act is in very many, probably the majority of cases, applied in only *parts* of Parishes and Hamlets, without any reference to other objects or arrangements. This shows, still more strongly, the impropriety of admitting such Bodies among the Local Authorities. It will create an additional inconvenience and difficulty in the cases where the clause applies. At the same time, it must be remembered that the practical observation already made as to Parishes in parts of which there are Town Councils or Commissioners, equally applies as to Parishes, Townships, or Hamlets, in which there are Inspectors of Lighting and Watching.

Where the jurisdiction of these extends over only a part of the Parish, the *remainder* of the Parish, Hamlet, or Township, will, *if no Committee is appointed*, be, in itself, a 'Place' under this Act ; but the Local Authority within it will be the last alternative named in this Act, namely the Surveyors, Overseers, and Guardians. It cannot, *separately*, choose a Special Committee."—*Practical Proceedings for the Removal of Nuisances, etc.*, 2nd edition, p. 27.

SECTION V.

OVERSEERS OF THE POOR.

As the object of this work is to convey a view of the obligations and powers of the Parish, as an Institution of Local Self-Government, in relation to matters affecting the Common Good, the detail of matters now done through means whereby the Parish has become deprived of its constitutional powers, does not properly come within its scope. As to such matters, it will be well simply to point out the position which the parish has held heretofore in reference thereto, and how it has been deprived of what powers and functions rightfully belong to it.

Neither the Office nor the Functions of "Overseers of the Poor" are known to the Common Law. This is not a Parish Office in the sense in which the Offices of Churchwardens, Surveyors of Highways, and Constables are such; the functions of all of whom have existed in every Parish from time immemorial. It is true that help to the poor has ever been deemed a work with which the Parish should be identified; but the part which the Parish or its officers had formerly to do in that regard, was the seeing that what had been or should be provided from any sources was rightly distributed. Thus, what it has been already seen that the Clergy were bound to devote to the poor,* was to be distributed in the presence of "the Churchwardens or some other honest men of the Parish;"† and the alms-chest, which formerly stood in every Church, was required to be under the charge of "the Churchwardens, or any other two honest men, to be appointed by the Parish from year to year;" and the contents of that chest were to be distributed, at convenient times, "in the presence of the whole parish, or six of them."‡ In accordance with this, ancient Parish Records often contain mention of "Distributors"§ chosen by the Parish.

The "Overseer of the Poor" is an officer of a different character to the above, and owes his existence and functions to

* Before, p. 95 and *note*.

† Sparrow, p. 5.

‡ Sparrow, pp. 9, 74.

§ See examples in Chap. VII. Sec. 12.

Statute only. The office and its functions arose out of a very extraordinary state of circumstances:—one which may indeed be truly styled revolutionary.

It has been already shown that an essential and principal part of the first bestowal and purpose of those endowments which have now become entirely diverted to ecclesiastical purposes, or engrossed by lay impropiators, was the relief of the poor.* The task of that relief was thus made a local one; and it was committed, in each place, to those who had the two counterchecks continually present, of self-interest not to promote or yield to extravagance, and of the continual liability to be presented, by those not then “excused,”† for unfaithfulness, if they neglected what true need required.

Under cover of the “Reformation,” Henry VIII. got to himself a vast proportion of what was thus expressly given in trust for the Poor. He got it under false pretences.‡ He gave it

* See before, pp. 28–31.

† See before, p. 71.

‡ “When any plausible project is made in Parliament, to draw the Lords and Commons to assent to any Act (especially in matters of weight and importance), if both Houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the Commonwealth, to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act, lest the benefit of the Act be taken, and the matter projected and promised never performed, and so the Houses of Parliament perform not the trust reposed in them. As it fell out (taking one example for many) in the reign of Hen. VIII. On the King’s behalf the members of both Houses were informed in Parliament, . . . that if the Parliament would give unto him all the Abbeyes, Priories, Friaries, Nunneries, and other Monasteries, that for ever, in time then to come, he would take order that the same should not be converted to private use: But *first*, that his Exchequer for the purposes aforesaid should be enriched. *Secondly*, the kingdom strengthened by a continual maintenance of forty thousand well-trained soldiers, with skilful captains and commanders. *Thirdly*, for the benefit and ease of the subject, who never afterwards (as was projected), in any time to come, should be charged with Subsidies, Fifteenths, Loans, or other common aids [taxes]. . . . The said Monasteries were given to the King by authority of divers Acts of Parliament, but no provision was therein made for the said project, or any part thereof; only *ad faciendum populum* these possessions were given to the King, his heirs and successors, to do and use therewith his and their own wills, *to the pleasure of Almighty God, and the honour and profit of the Realm*.

“Now observe the catastrophe; in the same Parliament of 32 Hen. VIII., when the great and opulent Priory of St. John’s of Jerusalem was given to the King, he demanded and had a subsidy, both of the Clergy and Laity. And the like he had in 34 Hen. VIII., and in 37 Hen. VIII. he had another subsidy. And since the dissolution of the said Monasteries he exacted divers loans, and against law received the same.”—Coke, 4th Inst. 44.

to his favourites, in breach of honour, honesty, and his pledged faith. This monstrous pillage of the poor, and gross fraud upon the nation, produced an immediate effect. The real and deserving Poor, robbed of what was thus from of old set apart to meet their true needs, were flung upon society. Vagrancy had thus everywhere a colourable excuse given to it, and soon largely increased. Instead of the true remedy being applied, and a part of what had been wrongfully misappropriated being restored, a new burthen was cast upon the country for the support of the Poor as a class. Thenceforth "pauperism" became a caste in England.

It is not surprising that, under the anomalous state of things thus arising, anomalies were created in the endeavour to meet it. Acts distinguished by their attempts to keep down the natural fruits of such wrong-doing by force, terror, and barbarity, were passed, altered, and repealed. It was attempted,—however paradoxical it may sound,—to enforce voluntary alms. Almost the only provision that can be said to be marked by wisdom, is one found in an Act of 27th Henry VIII. cap. 25, which forbade the giving of alms in money, except to the common fund, or "Stock," of the Parish or other place. In the same Act is found the first suggestion as to Overseers. It is enacted that "the Churchwardens, *or two others of every parish* of this realm, shall, in good and charitable wise, take such discreet and convenient order," by setting some to work, and giving help to the feeble, "so that in no wise they, nor none of them, be suffered to go openly in begging." The persons thus alluded to were chosen by the Parish, in Vestry assembled, and fulfilled their charge subject to the supervision of the Parish; to which, also, they had to make reckoning. This is distinctly and unequivocally proved by ancient Parish records still extant, as well as by the analogous "Injunctions" already quoted.*

Without travelling through intervening legislation on this subject, we may come at once to the 39th of Elizabeth, cap. 3, which (and not the 43rd of Elizabeth, as is commonly said) is the foundation of our modern Poor Law. This Statute enacts "that the churchwardens of every parish, *and* four substantial householders of the said parish, who shall be nominated yearly in Easter Week, *under the hand and seal of* [not *by*] two or more justices of the peace in the same county, dwelling in or near

* Before, p. 143.

the same parish, shall be called '*Overseers of the Poor*' of the same parish." The objects and character of this Act are the same as those of the 43rd of Elizabeth, cap. 2. The former was a temporary Act. The latter, however, was no more: but it was afterwards continued from time to time. It follows the 39th of Elizabeth, cap. 3, section by section, with a few alterations and verbal differences.

Under these Acts, the Churchwardens of every Parish, and others specially appointed as above, are Overseers of the Poor. There was clearly no intention in these Acts to sanction a departure from the regular and constitutional mode of election, in the appointment of the new Overseers. The express words of the "Injunctions" and Statutes already quoted, as well as old Parish records themselves, prove, on the contrary, that both the former "distributors" and "collectors" of alms and, after them, these Overseers, were, in fact, always *chosen* by the Parishioners. The intention of these Acts was, simply, that they should, after such choice, be formally instituted, or inaugurated, by a merely ministerial act of the Justices.* It is certain that the necessity for the only true responsibility,—namely to the Parish,—was always felt in these times. Numberless instances might be cited. It is enough now to say that, by Statute 27 Henry VIII. cap. 25, which was passed with direct reference to the present subject, it is expressly enacted that no Churchwardens shall remain in office more than one year.† And the want, as regarded Overseers, of the same amount of continual responsibility as had existed in the case of the old Distributors of alms, became felt to have such ill consequences that, in 1691, an Act was passed which emphatically recognized and enforced that Overseers were not to have "unlimited power;" but that, not only in their election but in their habitual duties, they were to be responsible to the Parishes. The inhabitants of the latter were declared to be in the fullest position of habitual control. One exception was indeed made. This, however well intended, was the cause why subsequent abuses grew up in the administration of the Poor Law. This exception enabled a justice of the peace to order relief. It is well known how this power was, as it could not but be, abused. It was giving an uncontrolled power to individuals, to spend the money of other people without any responsibility or account. Such a power, even with the best intentions, must, almost inevitably, be ex-

* See after, pp. 149, 150.

† Sec. 23.

exercised on impulse, and certainly without those means and opportunities of knowing and judging which the Parishioners as a body possess. The section alluded to is as follows:—

“Whereas many inconveniences do daily arise in cities, towns corporate, and Parishes, where the inhabitants are very numerous, by reason of the unlimited power of the Churchwardens and Overseers of the Poor; [it must be remembered that Churchwardens are Overseers by virtue of their Office] who do frequently, upon frivolous pretences (but chiefly for their own private ends) give relief to what persons and number they think fit; and such persons being entered into the Collection Bill, do become after that a great charge to the Parish, notwithstanding the occasion or pretence of their receiving collection oftentimes ceases: by which means the Rates for the Poor are daily increased, contrary to the true intent of a Statute made in the forty-third year of the reign of her majesty Queen Elizabeth, entitled an act for the relief of the poor. For remedying of which, and preventing the like abuses for the future, be it further enacted, that there shall be provided and kept in every Parish, at the charge of the same Parish, a book or books wherein the names of all such persons who do or may receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity. And that yearly in Easter Week, *or as often as it shall be thought convenient, the parishioners of every parish* shall meet in their Vestry, or other usual place of meeting in the same parish; before whom the said book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as *they* [that is the *parishioners*] shall think fit and allow to receive collection; and that *no other person* be allowed to have or receive collection at the charge of the said Parish—but by authority under the hand of one Justice of the peace residing within such parish,” etc.*

The supervision thus made essential by the Vestry, would have remedied all the evils. But the fatal exceptional admission of the power of a justice of the peace, disturbed the action of the system, and became the source of innumerable, and continually increasing, ills. So soon as 1722 these evils became

* 3 W. & M. c. 11, s. 11.

emphatically recorded on the Statute Book:* but yet, with strange and no doubt timorous inconsistency, the irresponsible power was allowed to remain!—as if irresponsible power were more likely to be satisfactorily exercised because a man was called a “justice” than if he were called an “overseer.” That fine old constitutional, and soundly logical, principle had become forgotten, which stands recorded on the Rolls of Parliament of four centuries earlier, that “more trust is to be placed in the opinion of the men of the neighbourhood than in the bare word of any one man.”† When at length the evil had come to an intolerable head, instead of its being dealt with in a Statesmanlike spirit, it was dealt with, in our own day, in the same narrow spirit as before; it may properly be said in a *more* narrow spirit than ever. Self-opinionated doctrinairism must needs apply its theories. Instead of the obligation being thrown on the practical and constitutional system of actual and permanent responsibility, and irresponsible action and interference being altogether removed, a new authority, absolutely irresponsible, and incapable of even those means of getting at the needful knowledge which a single justice may have, was set up; and those who are most interested in bringing about the best results, who are alone able to know all the facts, and whose unfettered action it was that had before been mischievously interfered with, (whence all the mischief,) were absolutely deprived of all action, responsibility, and control whatever!

By the unconstitutional measure which was passed, in 1834, known as the Poor Law Amendment Act, Parliament abdicated both its fundamental duties and its functions. It assumed to do that which it has no constitutional ability to do, and the attempt to do which was an assumption of merely arbitrary and despotic force. Power, which Parliament does not itself possess, and which it unquestionably has not the shadow of a constitutional authority to delegate at all, was pretended to be given by it to an entirely irresponsible and secret Body, to make, undiscussed and *ex-parte*, obligatory Rules and Orders at its arbitrary pleasure; which Rules and Orders Overseers of the Poor, and all such officers, should be obliged to obey. Instead of the Parishes obtaining, what was needed, a more thorough and independently responsible control over their own

* See 9 Geo. I. c. 7, s. 1.

† Rolls of Parliament, 21 Edw. I. (A.D. 1293) No. 7. See before, pp. 20, 21.

officers, all control whatever was taken away. The Parish has to pay the poor rates; and that is, practically, nearly all that is left to it in relation to this matter. It has no sort of control, direct or indirect, over the expenditure or application of the rates, nor over the officers who administer them. Thus indifference is engendered, and a moral degradation, of the most injurious and debasing character and tendency, is enforced; while, on the other hand, social treachery, and secret sycophancy, and moral and intellectual subserviency, are cherished and rewarded. The irresponsible functionary system, thus once established, has been (as is ever the case) always since continually striving to extend itself, not only in this department, but, under every form of pretext, in many others newly established, for its own sole benefit, at the public expense.

Under this Act, made in violation alike of constitutional principle and of the Law and Custom of Parliament, the Overseer is no longer the Officer of that name found in the Acts of Elizabeth. He has, in regard to the duties which his name indicates, to do the bidding of others, either as dictated by the Act itself or newly ordered by irresponsible functionaries. He cannot exercise his own intelligence and zeal on these matters, in the endeavour to do what he can discover to be best for the common good of all his neighbours, after conferring, as the Statutes of Elizabeth required him to do continually, with the Churchwardens and other Overseers.

Other duties, however, totally unconnected with the original purpose of the office, have, as in the case of Churchwardens, been gradually cast upon Overseers, which make the office still one of much importance, and make it highly necessary that men of intelligence, integrity, and position, should alone be entrusted with its duties.

The appointment of Overseers is annual, usually on the 25th March, or within fourteen days afterwards.* They are said to be "appointed" by the Justices. The Statutes of Elizabeth merely point out, however, the mode of formal authentication of the appointment,—namely, by the "hand and seal" of the Justices.† So, Poor and Highway Rates are said to be "al-

* 43 Eliz. c. 2, s. 1, and 54 Geo. III. c. 91. The terms of these Acts are not absolutely obligatory on the point of *time*. See *R. v. Sparrow*, 2 Strange, 1123; *R. v. Staffordshire*, 10 Law Journal, M. C. 166. So if an Overseer die, remove, or become insolvent: see 17 Geo. II. c. 38, s. 3.

† In the earliest Acts as to Overseers (there called "Gatherers or Col-

lowed" by the Justices; though the latter have no discretion in the matter, and the authentication of those rates is a merely ministerial act, which can be enforced by mandamus.* In the same way, the Bishop "institutes" the parson; though the "presentation," or real bestowal, of the living is the act of the Patron.

It has been already said that the choice of the old Distributors was always made by the Parishioners, while that of Overseers has, from the first, been, in the same manner, actually made by the Vestries.† They have been merely presented to the Justices for formal induction into office. This is still the usual and proper course. Some Justices may have desired to assert an ungracious and irresponsible power to override the choice of the Vestry.‡ But that the above is the sound and true Law, as well as practice, appears as well from the old Statutes and Records as from more than one modern Statute. Thus, the Highway Act (5 & 6 Wm. IV. c. 50), expressly states that the election of Highway Surveyors is to be made by the inhabitants "at their first meeting in vestry *for the nomination of overseers of the poor in every year.*"§ And the Statute 59 Geo. III. c. 12, s. 6, distinctly recognizes that Overseers are to be "appointed" by the Justices, "*upon the nomination and*

lectors:" 27 Hen. VIII. c. 25; 5 & 6 Edw. VI. c. 2; 5 Eliz. c. 3) no mention is made of the Justices. The 5 & 6 Edw. VI. c. 2, particularizes that these officers are to be "openly elected" by the inhabitants. In the 13 & 14 Car. II. c. 12, s. 21, the "choosing" and "appointing" are separately named, in practical accordance with what is above said as to "nominating." The distinction has been already pointed out between the terms "under the hand and seal of" and "by." It is the same distinction as that highly important one to which I have elsewhere called attention between "*coram*" and "*per*." See 'Local Self-Government,' pp. 277, 296.

* See after, Ch. VIII. Secs. 1 and 4. It is to be noted that the section under which this formal "allowance" of rates is required, is the same as that under which the "hand and seal" of the justices is required to the appointment of Overseers. In each case alike it is thus again plainly seen to be an act of formal *authentication* only, in which no place whatever is given for any *discretionary* power.

† It will be enough to recall here the quotations in p. 38 *note*, and p. 67, as illustrations of this fact.

‡ On this subject, the observations of Lord Campbell in a late case, as to its being "most inconvenient if magistrates interested could act," find a precise application. See *R. v. Surrey*, Q. B. Nov. 22, 1855.

§ The Statute of Anne (10, c. 20, s. 19) for building fifty new churches, does but illustrate the same thing, while affording clear proof of the actual Law and Practice.

at the request of the inhabitants of any parish in vestry assembled." Sections 1 and 7, of the same Act, expressly lay down the same distinction between the acts done. There are, first and essential, the "Nomination and Election" by the Vestry, and, second and as a ministerial form, the "Appointment *under the hand and seal of*" the Justices.*

Churchwardens are overseers by virtue of their office. A distinction has, indeed, been attempted to be drawn between "Chapel-wardens" of ancient Chapelries, though always called "Churchwardens," and the Churchwardens of Parishes.† But this distinction is clearly contrary to Principle, and in disregard, not only of the spirit of the Act of Elizabeth and that of Charles II., which will presently be named, but of the whole history of the subject, and even the recorded decisions.‡ In most cases of townships, though some of them usually choose a special churchwarden or churchwardens for themselves, those so chosen are, in point of fact, churchwardens of the whole parish, though usually confining their action to the part which specially chose them. The Churchwardens of modern "ecclesiastical districts," or "new parishes," are, of course, not Overseers.§

It is in addition to the churchwardens that "four, three, or two" other "substantial householders," are to be appointed. There must not be more than four nor less than two. Every substantial householder, with similar exceptions to those already noticed in the case of Churchwardens,|| is compellable to serve. The term "substantial" is necessarily relative, depending, in each case, upon the condition in life of the inhabitants of the Parish. A woman can be appointed, and will be compellable to serve. If the inhabitants desire it, and he whom they choose consent, one who is a ratepayer, but is not a householder, can be chosen; but he cannot be compelled to serve, as a householder can.**

* See before, p. 145. The above terms are merely more specific and precise in description. The Act 12 & 13 Vict. c. 8, also uses the word "appoint."

† R. v. Yorkshire, 6 A. & E. 863.

‡ See the facts, and the language used by the Court, in the cases of *Nichols v. Walker*, Cro. Car. 394, and *Hilton v. Pawle*, *ib.* 92; as well as other cases already cited. The facts are the same as those in R. v. Yorkshire; the decision is precisely opposite, in point of principle.

§ See before, pp. 38, 42, 65 note, 97 note, 136, 155 note.

|| See before, p. 92.

** 59 Geo. III. c. 12, s. 6.

Separate Overseers are often appointed, not only for entire Parishes, as of old marked out, but also for those "half parishes and hamlets," those townships and other divisions, that have already been alluded to. The principle of Local Self-Government involved in this Practice of sub-division, was, to prevent doubts and difficulties, explicitly re-declared, in accordance with the Common Law, by 13 & 14 Car. II. c. 12, s. 21.* Even extra-parochial places come within the terms of this Act and can have separate Overseers.† Where there are thus no churchwardens, the Overseers alone fulfil all the duties.‡

The questions that have arisen in consequence of this Act of Charles II. have been already alluded to;§ and the uncertainty and inconsistency of the decisions thereupon have been pointed out. The cases of Parishes "*by reputation*" do not come within this Act, but are admitted to be within the terms of the Act of Elizabeth.|| The cases that come within the Act of Charles are those of townships, vills, and hamlets. That Act itself was one that recognized the principle of *adaptation*. If it had become inconvenient, or should at any future time become inconvenient to carry out the Act of Elizabeth, on account of the largeness and growing populousness of an original Parish, the latter could be divided.¶ There is no finality recognized by the Common Law of England.** It was reserved for our own day, at the same time that, in other respects, it overset every principle that had hitherto been proved the soundest with regard to responsibility and local control, to lay down the doctrine of *finality*, as the further mark of modern progress! A late Act has made it unlawful to apply the above Act of Charles II. in any future cases, however much the change of circumstances may render it desirable.†† Notwithstanding this Act, however, questions will, from time to time, arise as to the separateness of a place, and the propriety of its having, at a date earlier than the Act last named, appointed separate Overseers. This has been illustrated by cases already quoted.‡‡ Each such case must, however, depend entirely on its own state of facts. If places, formerly sepa-

* See before, p. 37.

‡ 17 Geo. II. c. 38, s. 15.

|| See *Nichols v. Walker*, Cro. Car. 394; *Hilton v. Pawle*, Cro. Car. 92; *Rudd v. Foster*, 4 Modern, 157.

** See before, p. 68 *note*.

‡‡ *R. v. Clayton*, 13 Q. B. 354; *R. v. Sharpley*, 18 Jurist, 835.

† *R. v. Rufford*, 1 Strange, 512.

§ See before p. 37, and *note*.

¶ *R. v. Leigh*, 3 Term Rep. 746.

†† 7 & 8 Vict. c. 101, s. 22.

rated, mutually desire it, they can unite again in appointment of Overseers.*

As in the case of Churchwardens, even if there be any irregularity in the appointment, what is done by those actually in office will be valid.† Without this, public business could never go on. The principle is the same whether it be applied to the Crown or a Parish Office.‡

The Overseers are bound, under the Acts of Elizabeth, to meet at least once a month, in the church of the Parish, on the Sunday afternoon, after service, to consider of and determine on the course to be taken. This practice has dropped into disuse. Indeed, the Statute of 3 William and Mary, c. 11, s. 11, already quoted, which required the overseers to produce their Book, with a list of the poor receiving relief, before the inhabitants in Vestry,—an Act, in point of fact, which only made universal what was always done in properly conducted parishes,§—tended to a wholesomer course than the private meetings of the overseers. The mode of setting the Poor to work, and of giving relief, were naturally discussed before the body of the inhabitants at these meetings.

The original functions and powers imposed on the Overseers, by the Acts from the time of Edward VI.||—namely, to set to work children and such as had no means to maintain themselves, and to provide for the lame, impotent, old, and blind,—have been completely superseded and taken away by the Poor Law Amendment Act of 1834 (4 & 5 Wm. IV. c. 76). It cannot properly come within the limits of a work on parochial self-government, to detail the technical duties and obligations imposed by a functionary system of dictation, which is founded on no principle, and is continually shifting. In that great majority of cases where different parishes are joined in “Unions,” even the shadow of function, sometimes elsewhere existing in the Overseers, as to the management of the Poor, is taken away, and given to the “Guardians.” There remains, in these cases, nothing for the Overseers to do, so far as concerns the administration of the

* *R. v. Palmer*, 8 East, 416; *Lane v. Cobham*, 7 East, 1.

† *Penny v. Slade*, 5 Bingham's New Cases, 319. See before, p. 100.

‡ See the Statute, 11 Hen. VII. c. 1.

§ See the illustration of Steeple Ashton, in Appendix.

|| “Such as can get part of their living” are “by the discretion of the Collectors, to be put in such labour as they be fit and able to do, but none to go or sit openly a-begging.” 5 & 6 Edw. VI. c. 2, s. 2. See before, p. 14.

affairs of the Poor, except to make and keep rate-books ; to collect the rates ; to pay the rates over according to order of the guardians, or others directed by Act of Parliament or the Central Board ; and to submit their accounts of moneys so paid to the auditors of the Union. It is only in cases of "sudden and urgent necessity" that they are now permitted to give any relief.* Such relief must never be in money, but always in the articles needed to relieve the pressing nature of the case.

It has been already stated, however, that other duties have become cast on Overseers, which are of much practical importance. These, therefore, properly claim attention here.

Thus, overseers have some responsibilities thrown upon them in reference to Lunatics. These are specified in the Act of Parliament which imposes them,† and which ought always to be itself consulted whenever such a case arises in the Parish.

In case a body is found dead in a parish, the churchwardens and overseers are bound to bury it. This is an old and necessary practice under the Common Law, to maintain public health and decency ; but special points of it have been re-declared and enforced by various statutes.‡

The overseers may apprentice to the sea-service the children of persons chargeable to the parish.§ Any action for breach of covenant of the indentures of such apprenticeship must have the consent of the Vestry of the Parish, in order to ensure its safe proceeding.||

Every person applying for a license to retail beer or cider, must produce a certificate from an overseer of the place where he resides, testifying to the facts of his residence, his occupation of the house for which a license is asked, and the annual value of that house as rated, or claimed to be rated, to the poor-rates. Though every overseer ought, upon demand, to give such certificate, if he can do so in accordance with the facts, yet the very nature of the case reposes in him a certain amount of discretion. He must neither treat it as a matter of course, nor as one for caprice.¶

* 4 & 5 Wm. IV. c. 76, s. 54.

† 16 & 17 Vict. c. 97.

‡ See 48 Geo. III. c. 75 ; and 7 & 8 Vict. c. 101, s. 31 ; and see *R. v. Stewart*, 12 A. & E. 773.

§ 7 & 8 Vict. c. 112, ss. 32-39 ; 17 & 18 Vict. c. 104, ss. 141-145.

|| 7 & 8 Vict. c. 112, s. 35.

¶ 3 & 4 Vict. c. 61, ss. 2, 3, 5. See *R. v. Kensington*, 17 Law Journal Rep. Q. B. 332 ; and *R. v. Wittingham*, 2 Com. Law Rep. Q. B. 1657.

In case of the prosecution of a disorderly or gaming house, notice is required to be given to the overseers; and if the prosecution result in conviction, the overseers are bound to pay each of the prosecutors £10.*

Overseers are bound to pay to discharged prisoners, journeying through the parish to the place of their settlement, the proportionate sum named in a justice's pass; and the last overseer receiving the pass must send it, by post, to the keeper of the prison whence the late prisoner came.†

Other duties, of a different character to the preceding, have become by degrees attached to the office of Overseers, through the incidental circumstance of the making out of the Books for the Poor Rate being a part of their original duty. Those Books afford the readiest means of making other Rolls of names, and collections of contributions, which become necessary under various circumstances.

Thus, the churchwardens and overseers‡ are bound, upon order to that effect made by the council of any Borough, to pay out of the poor rate the amount of borough or watch rate legally leviable; or to make a separate pound rate for the purpose.§ A similar duty lies with the overseers in regard to Inspectors under the Lighting and Watching Act.|| And so, as to the County rate, the overseers are obliged to furnish the full information necessary for making and adjusting that rate; to lay both the information they furnish and the documents they receive before Vestry Meetings of their parishes; and, finally, to collect the amount of that Rate.¶

* 25 Geo. II. c. 36, ss. 5, 6, 7, 9; 58 Geo. III. c. 70, s. 7.

† 5 Geo. IV. c. 85, ss. 22-26.

‡ It must not be forgotten that Churchwardens are Overseers by virtue of their office. It is therefore of no importance whether they are specifically named or not in any Act relating to the duties of Overseers. They are included under the word "Overseers." Of course the contrary does not hold; that is, if Churchwardens alone are named, Overseers are not included, except in the special cases already named, before p. 152. In such cases, even though there be churchwardens of any "new Parish," or "ecclesiastical district," the Overseers alone, and not such Churchwardens, must act. These latter Churchwardens are only "to do all things pertaining to the office of churchwarden as to *ecclesiastical* matters, but are not liable, *nor competent*, to perform the duties of overseers of the poor in respect of such their office of churchwardens."—6 & 7 Vict. c. 37, s. 17.

§ 7 Wm. IV., and 1 Vict. c. 81.

|| See hereon, after, Chap. VIII. Secs. 2, 3, and 4.

¶ 15 & 16 Vict. c. 81: and see further hereon, after, p. 160.

The duties of the Overseers in regard to making out lists for Parish Constables have been already named.*

It is the duty of the churchwardens and overseers to make out the lists of men within their parish qualified and liable to serve on juries, and to fix a printed copy of the same on the church and chapel doors on the three first Sundays in September.† They will, before the time, receive a precept from the High Constable, which will give them the necessary information to enable them properly to fulfil the duty. This duty ought to be deemed a very responsible and important one. On its correct fulfilment the due administration of Justice in a large measure depends.

The Overseers must enter in a Book all claims of owners to vote at the so-called elections of Guardians of the Poor; and must distinguish, for the same purpose, in the rate book, those ratepayers who have paid up their rates, except what have become due within six months.‡

The duty of making out the lists of voters for both Counties and Boroughs, in reference to Parliamentary elections, is, moreover, laid upon them. They receive precepts from the clerk of the peace in the one case, and from the town-clerk in the other. In each case these precepts fully detail what has to be done. Upon receiving these precepts, they must publish the proper notices. All claims or altered claims for county votes must be sent to them before the 20th July in each year; and the register of voters is to be made out by them on or before the last day of July. They must publish this register on the 1st of August, and allow inspection and copies to be made of it under fixed regulations. They are bound also to receive notices of objections to voters at any time before the 25th of August, and to publish a list of persons objected to on the 1st of September in each year.§ There are some differences in the detail of the mode of making out the lists, receiving claims and objections, and making out final lists, in the case of Boroughs. The complication introduced into these things is much to be regretted. It forms a part of that mischievous system of per-

* Before, p. 126; and 5 & 6 Vict. c. 109.

† 6 Geo. IV. c. 50, ss. 1-16 and 45.

‡ 4 & 5 Wm. IV. c. 76, s. 40; 7 & 8 Vict. c. 101, s. 15; and the orders of the Poor Law Commissioners in relation thereto.

§ 6 Vict. c. 18, ss. 3-9, 27-33.

petual peddling legislation which characterizes our day. Instead of a few simple and permanent practical rules, applicable to all cases where electoral lists are to be made out, there are all kinds of minute and varying technicalities ; and these are, in one point or another, being perpetually tinkered and altered.* This is an effectual means towards frittering away the reality of free institutions, while great parade is, at the same time, made of care had for them.

The making out of the lists of electors ought not, any more than those of jurymen, to be let pass as a matter of routine only. Many Overseers allow themselves to treat it thus, and leave everything to the Vestry Clerk, or paid Assistant Overseer,—putting their signatures, without inquiry, to anything he brings them. Instances have occurred within my own knowledge, where names have, through such a most culpable carelessness, been let stand on the several lists for many years after the owners of those names have either been dead, or removed, or ceased from other causes to be entitled to a place there. Nothing can be more culpable. The Statutes committing these duties to Overseers, very properly annex heavy penalties to the unfaithful or negligent discharge of them. But such remissness should be looked at from a much higher point of view than that of mere dread of penalties. The making out of these lists is the function of the Overseers, as responsible and trusted public officers in the administration of the affairs of a free country. The Overseers ought to feel the responsibility, and that it is the part of all those who enjoy and appreciate and would maintain free institutions, to see that all such lists are truly and conscientiously prepared. On the truthfulness of the discharge of such duties depends the purity of the ordinary administration of justice, and, furthermore, the integrity of the electoral franchise, municipal and parliamentary,—and so the very character of our legislative and administrative Bodies. The Overseers are bound to go through each list themselves, and to assure themselves, so far as they can, of the correctness of each. In no case can the call on time for such a purpose be very great, while the mischief done by neglect of it must always be great, and may be enormous.

The overseers are bound to attend the revising barristers' courts with their lists of voters, and to answer any questions

* See the Acts 6 Vict. c. 18 ; 11 & 12 Vict. c. 90 ; 14 & 15 Vict. c. 14.

that the revising barrister may put to them as to those lists. They must also produce the original notices of claim, and notices of objection to votes, that have been given to them ; and, in the case of boroughs, the Poor Rate Books. Their expenses for such attendance, as certified by the revising barrister, are to be repaid out of the first rate collected by them.*

Under the Nuisances Removal Act, 1855,† the Overseers of each Parish (including the Churchwardens), and the Surveyors of Highways, are placed in a position of important responsibility in matters affecting the Public Health, wherever no other recognized Body separately exists. This subject will, however, be more properly treated in a later chapter.‡

It should be added that, in all cases in which the signatures of the Overseers are made necessary by any Statute or custom, as is the case to the lists before named, and on various other occasions, the signatures of a majority are enough. It is not essential that every one should sign.§

The Overseers are bound to make up a true and complete account of all receipts and disbursements during their year of office. Formerly this account was obliged, in all cases, to be each year verified on oath before Justices of the Peace.|| Under the New Poor Law system, this has been altered. The accounts of every Overseer must now be audited, at least twice a year.¶ District auditors have now been, for the most part, appointed by order of the Poor Law Board ; in which case all jurisdiction is taken away from the Justices.**

The Overseers will be allowed, in their accounts, all expenses which they have incurred either in direct relation to the relief of the poor, or in the discharge of any of the obligations or powers that have, as above illustrated, been cast upon them by any Statutes,†† as well as any costs of legal proceedings which they have properly incurred. Some of their lawful expenses, however, are to be reimbursed out of the County Rate,—such

* 6 Vict. c. 18, ss. 34, 35, 57 ; 11 & 12 Vict. c. 90, s. 1.

† 18 & 19 Vict. c. 121.

‡ See Chap. VII. Secs. 1, 3.

§ 16 & 17 Vict. c. 79, s. 14. See *R. v. Warwickshire*, 6 A & E., 873.

|| 17 Geo. II. c. 38 ; 50 Geo. III. c. 49, s. 1 ; and as to appeal, see 50 Geo. III., c. 49, s. 2, and 11 & 12 Vict., c. 91, s. 4.

¶ 4 & 5 Wm. IV., c. 76, s. 47 ; and 7 & 8 Vict. c. 101, s. 38.

** 7 & 8 Vict. c. 101, ss. 32–38.

†† And such expenses as those for constables (see Sect. 3 of this Chapter), and of perambulations and boundary stones. (See Chap. VII. Sec. 13.)

as those for burying dead bodies cast on the sea-shore, and for payments on gaol passes.*

No Churchwarden or Overseer can be in any way interested in any contract or supply of goods for the support of the poor.† This enactment fails, however, to secure the administration of Poor relief from jobbery. The Union system necessarily opens the door to jobbery, much more than could ever be the case when all proceedings were under the immediate eye of the Parishes and ratepayers directly interested.

It is not in the power of the Overseers, any more than in that of the Churchwardens, to pledge the credit of the Parish.‡ But, in case of any action brought against them, they are protected against vexatious litigation for acts done by them in the course of the duty of their office.§

It is important to add, that Overseers of the Poor are expressly declared by Statute to be capable, with the churchwardens, of taking and holding land in the nature of a Body Corporate.|| More will, however, be said on this subject in a future Chapter; where the causes that made such a declaration necessary will be fully considered.

On leaving office at the close of their year, the Overseers must deliver over to their successors all Books and Papers which are in their possession in their official character.¶

It has been seen that, though the Churchwardens are the summoners of most Vestry Meetings, the Surveyors of Highways sometimes have that duty cast on them. It is the same with the Overseers. The duty is cast on them of summoning Vestry Meetings for several special purposes. Thus, it is their duty to summon the Meeting before which the Constables' accounts must be laid.** It is also their duty to summon a Meeting to make out the list of Parish Constables.†† And,

* 48 Geo. III. c. 75, ss. 6 and 14; 5 Geo. IV. c. 85, s. 25.

† 4 & 5 Wm. IV. c. 76, s. 77.

‡ See before, p. 102; and see *Chambers v. Jones*, 19 Law Jl. Rep. Exch. 239. See 11 & 12 Vict. c. 91, s. 1, as to the reimbursement of any debt lawfully contracted within three months of the close of the year of office of the Overseers.

§ 7 Jac. I. c. 5; 21 Jac. I. c. 12.

|| 59 Geo. III. c. 12, s. 17.

¶ See 7 & 8 Vict. c. 101, s. 32, 33. This is, however, merely the declaration of a principle of Common Law, which would have been enforced by Mandamus.

** 18 Geo. III. c. 19.

†† 5 & 6 Vict. c. 109, s. 3; and see before, Sec. 3 of the present Chapter.

again, it is their duty to summon a Meeting in order to lay before it the Returns they have to make to the Justices, as materials for a Basis or Standard for the County Rate; and another, to lay before it the Basis or Standard itself, when this has been prepared by the Justices and transmitted to them.* These last cases are highly important. Few Overseers are probably aware of their duties in that respect; which it should be the care of the Parishioners that they do not neglect.

In treating, in a later page, of the subject of Poor Rates, it will be further shown how important it is to the welfare of the Parish that the Overseers be men of intelligence, energy, and independence.

* 15 & 16 Vict. c. 81, ss. 4 and 13; and see sec. 22.

SECTION VI.

ASSISTANT OVERSEER.

IT is a fundamental principle of Institutions of Local Self-Government, recognized by the Common Law, that every such Institution may appoint such officers and servants as it thinks fit, and assign to each such duties and functions as it thinks fit. If the payment of a salary to any such person be found to be for the common advantage, this also clearly comes within the same principle. A bye-law of the Vestry, properly made, as before shown, is sufficient authority for any such purpose. The old records of parishes show how one officer and another was, from time to time, thus appointed,—sometimes with salary, sometimes without. Several examples of each remain in common practice at this day.

It was thus that, as the Overseers' duties increased, an "assistant overseer" became often found necessary. The appointment of such an officer became indeed so common, and was found so beneficial, that, like as was the case with Surveyors of Highways, the suggestion was at length declaratively made by Statute,* that the inhabitants of any parish, township, or otherwise, in Vestry assembled, may nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish; at the same time determining and specifying the duties which shall be performed by every such officer; and fixing such yearly salary, for the execution of the office, as they shall think fit. The justices are then to "appoint,"—that is, as before shown, simply ministerially to inaugurate,—the person or persons so chosen by the Vestry.† The salary annexed to the office, is to be paid at such times and in such manner as the Vestry agree. The Vestry will also require

* For the important principle involved in declaratory Acts, see before, p. 60, *note* †; and 'Local Self-Government and Centralization,' pp. 155, 254, 256.

† See before, pp. 146, 150; *Holland v. Lea*, 9 Exch. 430.

such security, if any, as it thinks fit, for the due fulfilment of the duties of the office.*

The duties to be discharged by any assistant overseer should always be expressly stated; and they must, of course, be those, or some of them, with which the overseers themselves are charged. Though it would be highly unbecoming, yet it cannot be said to be actually illegal, for the same person to hold the office of overseer and assistant overseer.† Such a combination will certainly, however, never be allowed in any well-conducted Parish. An Assistant Overseer can never be a Guardian.‡

The New Poor Law Acts, which set at naught, in so many important points, constitutional principle and the rules of sound legislation and administration, have interfered to some extent in this also. The Poor Law Board, having been defeated by the Courts of Law in many characteristic attempts to grasp at unlimited and arbitrary powers,§ forthwith got, by the ready means at the disposal of the official instruments of the functionary system, certain Acts to be passed confirming previous illegal orders, and giving them a future power to order the appointment of *Collectors* (not Assistant Overseers) by Boards of Guardians, without the slightest reference to the real needs of the case, or to the wants or wishes of any parish.|| By one of these Acts this encroachment was still further extended,¶ by the suggestion that, where such illegal order had been made, and any appointment had followed it, the Parish should assign the duties of Assistant Overseer to such nominee, instead of to one chosen by themselves. The power of the Poor Law Board, as to such order, is, however, very limited. It should be well understood that the Acts thus referred to, extend, in fact, only to *Collectors*. The Parish must still appoint *Assistant Overseers*, if there be any; but, if a Collector have been appointed under any such order, and the Parish commit to him the duties of Assistant Overseer, he will not be responsible to them, but to the Poor Law Board. The words of

* 59 Geo. III. c. 12, ss. 7 and 35.

† *Worth v. Newton*, 10 Exch. 247.

‡ 5 & 6 Vict. c. 57, s. 14.

§ See cases enumerated in the note on following page.

|| 2 & 3 Vict. c. 84 and 7 & 8 Vict. c. 101. Compare with these, 4 & 5 Wm. IV., c. 76, s. 46, and the case of *R. v. Poor Law Commissioners, re Cambridge Union*, 9 A. & E. 911; which applies (as is indeed admitted in it) even more strongly to the case of assistant overseers than to its own principal point.

¶ See examples of the same tendency before, pp. 62, 149 and p. 164.

the Act are, that “*the inhabitants, in vestry assembled, of any parish situated within the district for which any collector or assistant overseer* appointed under any order of the said commissioners now [i. e. in 1844] acts, may appoint such collector or assistant overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as assistant overseer under*” the act above named. To the Vestry and the Vestry alone therefore belongs, under any circumstances, the assigning to any one of the duties of Assistant Overseer for the Parish. But it behoves every Parish to take care that it not only appoints the duties, but the officer, in accordance with the Common Law, and as declared by 59 Geo. III. c. 12. *The Poor Law Board has no power whatever to appoint, or to order the appointment of, any Assistant Overseer in or for any Parish.*†

* But such order cannot extend to assistant overseer. See the following note.

† It is perfectly plain that none of the new Poor Law Acts affect the power of any Parish to appoint assistant overseers. Sec. 62 of 7 & 8 Vict. c. 101, affects only the case of *Collectors*; which fact in itself affords the clearest guide to the interpretation of sec. 61. Sec. 61 says that, if a “collector or assistant overseer” have been appointed under an order of the Poor Law Board (which can only now be after application by the guardians: see sec. 62) the vestry cannot then appoint any collector or assistant overseer. But it is obvious that these words can be only taken distributively: that is, if by such order a collector have been appointed, the Vestry cannot appoint a collector; if by such order an assistant overseer have been appointed, the Vestry cannot appoint an assistant overseer. But it is quite plain that the Poor Law Board, which can only order the appointment of a *Collector* by virtue of 7 & 8 Vict. c. 101, s. 62,—the Act of 2 & 3 Vict. c. 84, s. 2 only legalizing certain *previous orders*—has no power at all to order the appointment of an *assistant overseer*, under any circumstances. This point is, indeed, prominently declared in the case of *R. v. Greene*, 16 Jurist, 663, in the very remarkable judgment of Lord Campbell; who speaks of the idea of “*giving powers by implication*” as “*a strange mode of legislation*,” which the Court does not in the slightest degree sanction. That case went off on another point, not very creditable to the Poor Law Board, inasmuch as it rested on the assumption of an actually illegal act done by them. I venture to think, however, that, even on this point, the case would, on a fuller consideration of some aspects there untouched on, have been decided differently; and that the real value of the case rests, therefore, on the point just quoted; which is much strengthened by the fact of its having been allowed to go off on the other point. See further, on the principal point in question, the observations of Patteson, J., in that case: and compare *R. v. Strand Union*, 9 A. & E. 901; *R. v. Poor Law Commissioners, re Cambridge Union*, 9 A. & E. 911;

The appointment of an Assistant Overseer by any Parish is, of course, not a permanent one. It will be annual, or otherwise, as the parish thinks fit. The Parish may revoke the appointment whenever they think fit. Even though they have been entangled in the snare set for them by the Act above quoted, they can clearly rescind the appointment of this Collector as Assistant Overseer, when they please; for he is only to be assistant overseer "in the same manner as if" appointed under the Act of 59 Geo. III. When the appointment is thus rescinded, the "order" ceases, in so far, to "remain in force," and they can make any other appointment of assistant overseer. It must also be remembered that the Vestry can appoint more than one Assistant Overseer, if they please.* Care must always be taken that the choice of the Vestry be made technically complete by the ministerial act of the Justices.†

It is the habit of some parishes to appoint the same person to be Vestry Clerk and Assistant Overseer. This is an injurious practice. It is doubly prejudicial under the New Poor Law system. Several of the duties of Assistant Overseer are connected with what arises out of the administration of the Poor Law. Hence that officer is, like the Overseers, bound to

especially the incidental observations of the Judges throughout, and the judgment of Mr. Justice Coleridge in the latter case. See also *Points v. Attwood*, 13 Jurist, 83. All these cases agree that no power has been given by any Statute (and they can have been derived from no other source) to the Poor Law Board, to order the appointment of an Assistant Overseer (the Board can never *appoint* any officer: *R. v. Hunt*, 12 A. & E. 130), but that, on the contrary, the powers declared in 59 Geo. III. c. 12, s. 7, are expressly reserved to Vestries. What the 7 & 8 Vict. c. 101, s. 61 really does, is to suggest that the Vestry should appoint a Collector, who is subject only to the authority of the Poor Law Board, to fulfil the duties of Assistant Overseer, instead of appointing independent officers of their own choice. The real meaning of the section seems to be, that *if*—such *Collector* having been appointed by order prior to 1844—the *Parish have appointed him to be Assistant Overseer also, in that case* they cannot, during the continuance of *that person* in the office of Collector and Assistant Overseer, appoint any one else to either of those offices. This view reconciles both parts of the section, and can alone bring it into consistency with section 62.

The cases quoted above, with some others cited in the next Section, afford an instructive example of the attempts that will always be made, under the irresponsible functionary system, to grasp at arbitrary and despotic powers.

* The "continuance in office or dismissal" of the Collectors depends solely on the caprice of the Poor Law Board. See 4 & 5 Wm. IV. c. 76, s. 46, and 2 & 3 Vict. c. 84, s. 2.

† See *Holland v. Lea*, 9 Exch. 430.

‡ See after, Sec. 14.

carry out many of the orders of the Poor Law Board. But the duties of Vestry Clerk can never be more than remotely, and quite incidentally, connected with the Poor Law. They mainly embrace other and highly important duties. The Poor Law Board, like every instrument of centralization, is continually seeking fresh excuses and opportunities for grasping at further encroachments on local self-action and independence. It is of great importance to maintain the office of Vestry Clerk, which has been already sought to be tampered with,‡ as entirely separate as possible from everything that can give any colour or excuse for interference or for attempts at encroachment.

The duties of the Assistant Overseer will be just such as are specified by the Vestry, at the time of his appointment, and no others.* He is not, it must be always remembered, the officer or servant of the Overseers. He is the officer of the Vestry: he derives his authority exclusively from the Vestry.† He is included, therefore, in the term "overseer" used in the Acts as to notices of objection to Parliamentary electors.‡ He is bound, however, to obey the lawful instructions of the Overseers of the Poor§ in all matters pertaining to the office of which they are the honorary holders, and he is the paid holder. The responsibility of the Overseers is not lessened by the fact of there being an Assistant Overseer. It is absolutely essential, therefore, that his subordination to them should be maintained.

* See *Bennett v. Edwards*, 7 Barnewall and Cresswell's Reports, 586.

† See *R. v. Watts*, 7 Adolphus and Ellis' Reports, p. 469.

‡ See, for instance, 6 Vict. c. 18, ss. 4, 17, and 101; and see *Points v. Attwood*, 18 Law Journal, C. B. 19 (13 Jurist, 83).

§ This is very unnecessarily declared in 7 & 8 Vict. c. 101, s. 61.

SECTION VII.

GUARDIANS OF THE POOR.

THE names of officers are often changed without much else being done than confusion being brought into the understanding of their duties. It has been seen that the first officers appointed in immediate connection with the relief of the poor, were called "Gatherers" and "Collectors," inasmuch as they only gathered in what others distributed. The name "Overseers of the Poor" was afterwards adopted,—a very good name to express the functions of the new office. The ingenuity of legislators who desired to appear original, hit, at a later day, upon the name of "*Guardians*." The last of these four names has been more lately applied to officers and functions of a very different character from those to whom it was first applied, though connected with the same purpose. As, under some form or other, these "guardians" either do or may exist in every Parish, it is necessary to notice the source of their authority, although their functions are immediately connected with that administration of relief to the Poor which used to be entirely parochial, but which is no longer so; and into the details of which it is not, therefore, for the reasons already stated, consistent with the scope of this work to enter.

"Guardians" may exist either for single parishes, or for groups of parishes joined in "Unions." Besides this distinction (which is, however, a very material one), there are three different kinds of Poor Law Guardians now existing and acting. These are:—

- 1st. Guardians under special local Acts. They are sometimes called "Directors," and sometimes "Governors," of the Poor, in those Acts: but "Guardians" is the most common name.
- 2nd. Guardians appointed for Unions under Gilbert's Act; 22 Geo. III. c. 83.
- 3rd. Guardians for Unions (or, very rarely, for single Parishes) under the New Poor Law Act; 4 & 5 Wm. IV. c. 76.

Though the two former of these are not superseded by the last,* it is expressly declared, that all the offices and functions named in the former Acts “shall be exercised *under the control, and subject to the rules, orders, and regulations*” of the Central irresponsible Body appointed by the last-named Act.† Even the elections of the Officers and Guardians named either in Local Acts or in Gilbert’s Act are, so far as the Poor Law Board think fit, to be made according to the New Poor Law Acts.‡ Practically speaking, therefore, the two former kinds of Guardians have lost their independent vitality, and have been made to bow before a system of arbitrary and irresponsible centralization.

The idea and fact of *Guardians* are, save in a few exceptional cases, identified with that of the enforced “Union” of several Parishes under one management for Poor Law purposes. This is a system lately introduced, in order to give greater facilities for imposing the functionary system. As far as regards the well-being and character of the Poor themselves, and the healthy tone of the relations to one another of the different members of the social community in every place, and the effect therefore on the general moral and social sympathies, nothing can be more pernicious, chilling, and cruel than this “Union” System. Human nature remains the same now as it did when, in a well-known case, Lord Chief Justice Kenyon very emphatically said:—“In small divisions the officers are more attentive to their duty; and in the part of the country with which I am acquainted, the poor are better provided for in the small districts:” following up which remark, Mr. Justice Buller said, in the same case:—“I entirely agree with my Lord Chief Justice, that greater care is taken of the poor in small than in large districts:” and Mr. Justice Grose said:—“If I were to give my opinion of the policy of the law, I should not hesitate to say that, *from my own experience*, I have found that the poor are better provided for in small than in large districts.”§

Gilbert’s Act was one for voluntary and consenting action:

* An attempt was made by the Poor Law Board, in the Session of 1856, to extinguish Unions under Gilbert’s Act; but the attempt was defeated.

† 4 & 5 Wm. IV. c. 76, s. 21. And see *R. v. Poor Law Commissioners*, 20 Law Journal, M. C. 236; *R. v. P. L. C.* 3 Q. B. 325. They received a check, however, in the attempt to assume unlimited arbitrary power over these Bodies. See *R. v. Poor Law Commissioners*, 11 A. & E. 558.

‡ 4 & 5 Wm. IV. c. 76, s. 41. § *R. v. Leigh*, 3 Term Reports, 748.

the New Poor Law enforces compulsory and capricious action. Gilbert's Act declares the power of any parish or parishes to adopt its provisions at their own pleasure, and after consideration by themselves. And observing therein constitutional Principle, it makes a public meeting of the inhabitants *essential* to every election of Guardians under it. Thus alone can responsibility and knowledge, and opportunity of question and suggestion, be secured.* As it is always the object of functionarism to destroy these, and to prevent alike the moral sense and the intelligence of men from being directed at all to the consideration of their duties to their neighbours, the New Poor Law Act leaves no option or consideration to the places affected;† while the Guardians of Unions formed under it are required to be nominated (the word "chosen" or "elected" would be grossly misapplied) in secret; without any possibility of knowledge, among those pretended to be represented, of either who are thus nominated, or what manner of men they are; and without any opportunity of question or suggestion. The so-called election is carefully arranged so that it shall have no character of a true election, but be always, if the new system be allowed to follow its own course, solely in the hands of cliques. The whole thing is but a hollow sham. All trace of real representation and free choice is thoroughly eradicated; while the mockery of the name is kept, in order to delude that large part of mankind which worships names instead of regarding things.

The Poor Law Board is, under the New Poor Law, to "*determine the number, and prescribe the duties, of the guardians*" in every Union and Parish, and to "guide and control" them.‡ It is also to "fix a *qualification*, without which no person shall be eligible as such guardian," (not exceeding £40 a year rental). It is also "to determine the number of guardians which shall be elected by each Parish."§ Thus completely and uncon-

* See before, pp. 87, 88, *note*.

† See 4 & 5 Wm. IV. c. 76, s. 26, as to Unions for management of the Poor; section 33 as to Unions for purposes of Settlement; section 34 as to Unions for purposes of rating; and section 46 as to Unions for the purpose of appointing and paying officers;—in reference to which last, Mr. Justice Patteson naturally enough declared (in *re Cambridge Union*, 9 A. & E. 919): "which latter sort of Union I am unable to comprehend."

‡ 4 & 5 Wm. IV. c. 76, ss. 15, 38.

§ 4 & 5 Wm. IV. c. 76, s. 38. The provision for *consent* to altering this, contained in s. 41 of the same Act, is repealed by 7 & 8 Vict. c. 101. s. 18. As to guardians for single parishes, see 4 & 5 Wm. IV. c. 76. s. 39.

stitutionally has Parliament, by this system, abdicated its own functions, and sought, at the same time, to deprive those Bodies whence alone all the authority which it has is derived,* of their inherent rights and functions of Local Self-Government.

Not only is the "election" of Guardians, under the New Poor Law, reduced to a mockery, but, to prevent, if possible, the accidental infusion of independence into the Body of the Guardians, the "Orders" of the Poor Law Board (to which Body the New Poor Law Acts also give the further extraordinary power of thus "ordering" and directing the whole manner of the so-called "elections†") have taken care to put the votes and returns within the uncontrolled disposition of the Clerk to the Guardians. This officer is himself made, by those Acts, wholly independent of his nominal masters. He is, in point of fact, the master, not the servant, of the Board of Guardians. He is dependent solely on the Poor Law Board. By the means above named he is enabled—it may be truly said that a premium is held out to him to contrive—to get a set of Guardians that will suit his own purposes, and give him least trouble; and such as will best enable him to find favour in the eyes of his real masters, the Poor Law Board and its peripatetic Functionaries. The natural straightforwardness of Englishmen has, no doubt, hitherto made many such officers proof against all such temptations. But this is *in spite of the system*. The inevitable tendency of that system is, to lower the tone of moral feeling, and to blunt the sense of honour in a public officer. Opportunity for every fraud is given: there is no check on carelessness or blundering. Such a system cannot but be continually drawing in those exposed to such temptation, to yield more or less to it; and well-known instances have occurred in which it has been successful in producing its worst but natural fruit.

A man may live in a Parish all his life, without being aware that any election of Guardians, under this system, has ever taken place. Many men, taking a warm interest in local sound management, have lived for more than a dozen years in a parish without being able to discover, by any external symptoms in the place, how or when the so-called Guardians get appointed. The mockery of the sham election is, however, gone through once a

* See before, p. 10, and 'Local Self-Government,' pp. 71, 87, and 88.

† 4 & 5 Wm. IV. c. 76, s. 40. See *R. v. Oldham Union*, 16 Law Journal, M. C. 110.

year. The Guardians of one year last till the 15th of April of the next year, or till new ones are appointed.* The new appointment must be within forty days after the 25th of March. About the 15th of March,† a careful search will enable the industrious and keen-sighted inquirer to discover printed papers, very long and difficult to read, and still more so to understand, stuck up in one or two places in the Parish, signed by the Clerk to the Guardians. These documents, carefully framed to prevent any danger of real election, will be found to state a number of complicated particulars, forms, and rules, all which are to be observed by voters. These last consist of ratepayers, and of owners who have required to be entered as voters ;‡ which latter may even vote by proxy.§ All the nominations are to be secret.|| Each one is to be sent, in writing, to the clerk to the Guardians ; who, if more persons have been nominated than the number allowed by the Poor Law Board, issues voting papers. And then — still without any meeting, or any opportunity given of question, or any other test afforded for knowledge, or

* Compare 4 & 5 Wm. IV. c. 76. s. 38, with 5 & 6 Vict. c. 57, ss. 8 to 12, and 14 & 15 Vict. c. 105, s. 2 ; and see *R. v. Todmorden*, 1 Q. B. 185. Section 41 of 4 & 5 Wm. IV. c. 76, as to altering the “number, mode of appointment, removal, and period of service” of guardians, with the *consent* of the Parishes affected, is virtually repealed, as to the point of consent, by the later Acts. See note on page 168 as to the number ; and see the above references as to the other points.

† This, though ordered by the Poor Law Board, by General Order of 24th July, 1847, is illegal, even according to their own Acts. They *order* that the nomination shall be after the 14th, and *on or before* the 26th March. The Acts expressly declare that the election shall be *on* the 25th March, or “within fourteen days *after*” (4 & 5 Wm. IV. c. 76, s. 38)—now, “within forty days *next after* the said 25th March” (7 & 8 Vict. c. 101, s. 17). The nomination is a principal act of the election. In most cases it ends it. It is clear that every election made under this “order” is contrary to law, and so void. But it is characteristic of Centralization, in every shape, that it habitually sets at naught the Law,—as well that contained in details of its own framing, as those fundamental Principles which its own existence violates.

‡ See 4 & 5 Wm. IV. c. 76, ss. 38 and 40, and 7 & 8 Vict. c. 101. s. 15.

§ The voting scale differs from that under Sturges Bourne's Act. A man may vote, at the same time, both as owner and occupier. The scale is, under £50 one vote ; under £100, two votes ; under £150, three votes ; under £200 four votes ; and so on, up to six votes. 7 & 8 Vict. c. 101, s. 14. Every ratepayer must have been rated for a whole year, and have paid all poor rates not due within six months (4 & 5 Wm. IV. c. 76, s. 40 ; and 7 & 8 Vict. c. 101, s. 15 & 16.

|| See before, p. 88, *note*.

any means of securing responsibility,—the nominal (for it is not a real) polling takes place. Otherwise, the election is at an end with the act of secret nomination! It is hardly necessary to add that these matters are always managed by little cliques. The whole machinery is carefully contrived for that purpose. Any other result is absolutely impossible, unless the Statutory Law be neutralized by energetic action voluntarily undertaken by those concerned.*

The entire and irresponsible control of the whole so-called election, whether it go so far as the nominal polling or not, is put in the hands of the clerk, who admits or rejects what votes he thinks proper, and also what persons may be nominated as candidates;† and has every other facility given him for falsifying the so-called elections. The votes are not given by a real (that is, a personal) Poll, which would be some protection that the proceedings are honestly conducted; but by voting papers, sent round‡ by the clerk to the Guardians, collected by him, and examined and allowed by him; and he alone declares the Poll!§ Such a system, thus nakedly but truly stated, seems incredible; and it would be impossible, did any of that sense of public spirit and of self-respect exist now which formerly prevailed, and which is alone consistent with the maintenance of the reality of free Institutions.

It is declared that any person nominated may send in, *before* the day of election, his refusal to act.|| After the so-called election is complete, it is too late to do so. It does not appear, however, how the nominated person is to find out the fact of his nomination. He will generally be clever to do it under this secret system. The clerk to the guardians need give no information to the persons proposed, till the whole election is ended. Were this really a Parish office, no one would be justified in evading the obligation to serve. As it is, it is no more than an instrument of functionarism; and no man conscious of

* See, hereon, 4 & 5 Wm. IV. c. 76, ss. 38, 40, etc.; 5 & 6 Vict. c. 57, ss. 8–13; 7 & 8 Vict. c. 101, ss. 15, 17, 18; 14 & 15 Vict. c. 105, ss. 2 & 3; and Order of the Poor Law Board of 24th July, 1847.

† See Article 12, of Order of 24 July, 1847.

‡ But see Articles 18, 19, 20 of the Order of 24 July, 1847; which, practically, enable the Clerk to suppress as many votes as he likes.

§ See Articles 21 and 23 of the Order already referred to; and see hereon before, pp. 88, 89, *note*.

|| 5 & 6 Vict. c. 57, s. 9.

true self-respect will consent to serve, except under special circumstances, and under a different actual mode of appointment from the above statutory system of secret nomination. Of course a spirited parish, determined to vindicate its own position, may take care to secure, by means of voluntary public meetings, or of special Vestry meetings (which is a better course), an actual nomination of certain guardians. By this means, the working of that cliquism which the New Poor Law system has striven to introduce everywhere, may be, to a certain extent, practically prevented. But this, though always possible, will not be, as it ought to be, a part of the indispensable fulfilment of the requirements of the modern Law; but, on the contrary, it will be in spite of the departure of the latter from the principles of the Constitution and the Common Law. It is the course, however, which every friend of sound Parish action and wholesome and responsible government, will always urge to be taken. After all thus done, however, any individual or clique may secretly nominate other guardians, and by a sham election the whole proceedings may be defeated. But the taking of the course recommended will have made exposure more easy in such a case.

If a vacancy occurs, the Poor Law Board ought immediately to order a new election.* In this case, the Parish Vestry should take the initiative, if it is felt that the full number is more likely to protect any interests of the Parish. It should inform the Poor Law Board, and request an immediate order for a new election. The Poor Law Board can, at any time, alter the number of Guardians to be sent from any Parish, at their pleasure.†

If a parish contains more than 20,000 inhabitants, the Poor Law Board (not the Parish!) may divide it into "wards," and fix a number of guardians to be elected by each.‡ This differs, in every respect, from the Common Law principle, practice, and purpose, of the division of Parishes.§ The division is here made dependent merely on the will and pleasure of the irresponsible central authority; and only enables the objects of the latter to be more surely carried out. It produces no advantages whatever of more complete Local Self-Government to the parts concerned. It is, in fact, a mere abuse of terms to

* 5 & 6 Vict. c. 57, s. 11.

† 7 & 8 Vict. c. 101, s. 18.

‡ 7 & 8 Vict. c. 101, ss. 19-21.

§ See before, pp. 34, 35 *note*.

call these enforced divisions, made only for the purpose of manufacturing Poor Law Guardians, by the name of "Wards."

An independent and active spirit in a Parish, will lead to the Guardians being called to account on every occasion of the meeting of the Vestry. This cannot be without much wholesome effect. No regular means of this are, however, allowed by the doctrinaire system of the New Poor Law. The Guardians are, in fact, entirely irresponsible. They act, as they are elected, without any check or security existing by which the interests of the Parish may be protected. From first to last the one element essential to the fulfilment of any public duty—immediate responsibility—is altogether wanting. Self-interests can be served;* empty vanity can be gratified. Honest indignation or a sense of duty may sometimes, indeed, make earnest and anxious efforts:—but Boards of Guardians under the New Poor Law system are not, and can never be, independent, intelligent, and responsible Institutions of Local Self-Government. Such characteristics are, from the very constitution and nature of these Bodies, as far as the Poles asunder from those which mark them.†

The Boards of Guardians are, nominally, entrusted with the administration of the relief of the Poor. But they have, in point of fact, no discretion allowed them. Their duties are "prescribed" by the Poor Law Board;‡ and they are subject, at every turn, to the arbitrary orders of that Board.§ They have not the control over their own officers and servants. They may be forced to appoint officers at the bidding of the Poor Law Board, but they can neither dismiss nor continue an officer, nor even choose one, except at the pleasure of the Poor Law Board. The latter also controls both the duties and salaries of every officer. It may dismiss any officer of any Board by its secret and absolute mandate, acting on any secret calumny or private pique, and without giving any hearing to the man

* The prohibition contained in 4 & 5 Wm. IV. c. 76, s. 77, against any one concerned having an interest in any contract, is readily evaded.

† It must never be forgotten, also, that the *Parish* is swamped in the *Union*. Thus, alone, every element of real Local Self-Government is wanting in the Boards of Guardians. And those who would still further advance the work of functionarism and centralization, have proposed to have County Boards, nominated by these clique-begotten Boards of Guardians; and would pass this off, on a public that loves to be flattered and deluded, as *County Representation!*

‡ 4 & 5 Wm. IV. c. 76, s. 38.

§ *Ib.*, ss. 18, 26, 42, 46, etc.

thus ruined, or listening to any inquiry.* This is in direct violation of common sense, of Magna Charta, and of every constitutional principle, and rule of plainest right and honesty. Unhappily it is no theoretical power. It is thus exercised whenever caprice can be thus gratified. In the same way, however much the Board of Guardians, knowing all the facts and circumstances, may know the mischief and useless cost of appointing certain officers, the Poor Law Board may, at its arbitrary caprice, require and compel them to appoint such officers. Instances of this form of the exercise of its arbitrary caprice are also by no means wanting.† Even constituted as they are, Boards

* 4 & 5 Wm. IV. c. 76, s. 46; and see *R. v. Poor Law Commissioners*, 11 A. & E. 558; *R. v. Braintree*, 1 Q. B. 130; *R. v. Poor Law Commissioners*, 20 Law Journal, M. C. 236; *ex parte Teather*, 19 Law Journal, M. C. 70.

† In Mr. Hyde's speech, made, by order of the Commons, before the Lords in April, 1641, on the subject of the Counsel of the North, there occur several passages singularly appropriate to the present subject. Mr. Hyde and his associates succeeded then, on the identical grounds thus put, in upsetting Star Chamber, Court of High Commission, and Counsel of the North. In our day, Mr. Hyde's successors and their followers have succeeded in reintroducing, on a far larger scale, a system and jurisdiction marked by precisely the same characteristics as he then so emphatically and justly denounced as contrary to Magna Charta, which declares "that all proceedings shall be *per legale judicium parium, et per legem terræ*," whereas "this jurisdiction tells you, you shall proceed according to your *discretion*, that is, you shall do what you please." In the same speech he adds, what might have been written in prophetic application to the New Poor Law system:—"Such a confusion hath this discretion produced, as if discretion were only removed from rage and fury. No inconvenience, no mischief, no disgrace that the malice or insolence or curiosity of these commissioners had a mind to bring upon that people, but, through the latitude and power of this discretion, the poor people have felt: this discretion hath been the quicksand which hath swallowed up their property, their liberty." On the same subject, that distinguished Judge, Lord Camden, forcibly said, a century and a half later:—"The discretion of a Judge is the Law of tyrants. It is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, and passion. In the best it is oftentimes caprice. In the worst, it is every vice, folly and passion to which human nature is liable."¹ Lord Coke exhorts Parliament to "leave all causes to be measured by the golden and straight metewand of the *Law*," and not by "the incertain and crooked cord of *Discretion*;"² an exhortation which Parliament has carefully disregarded. It is this "*incertain and crooked cord*" which is set up by the New Poor Law Acts, and by all the similar branches of the functionary system which our day has seen spring up, with mushroom growth, in England.

¹ Judgment in the case of *Hindson v. Kersey*, 1771.

² 4 Inst. 41.

of Guardians have been found, however, in many places, not to be so subservient as was expected. In several instances, such Boards have successfully resisted the attempts of the Poor Law Board, to grasp at an arbitrary control even beyond what could be brought within the terms of the numerous Acts which they have gotten to be passed in order to secure their powers;* thus startling the Poor Law Board into the unexpected discovery that even itself "has not such an absolute authority but that its proceedings are bound by Law."† The cases where such resistance is possible are however narrow, and have been gradually and carefully more and more narrowed; nor can the administration of the relief of the poor assume again a sound and healthy state, until the whole of the modern Legislation on the subject has been remodelled, in a very different spirit to that which characterizes all the Acts known under the general name of the "New Poor Law," and until the dealing with it has become marked by practical statesmanship, instead of by pedantic and ever-suspicious doctrinairism.

Justices of the Peace are *ex officio* Guardians, under the New Poor Law Acts; which they are not under Gilbert's Act. It has been seen that it was the individual and irresponsible power given to justices, by some old Acts, which produced most, if not all, of the evils which the authors of the New Poor Law paraded, as the grounds that made necessary the adoption of a new system in the management of such affairs. But the power of justices, as members of Boards of Guardians, is not of the same nature as it was formerly; and however wanting in principle may be the propriety of their being declared *ex officio* members of such Bodies, it must be confessed that, appointed as the other parts of the Board of Guardians, are, the Justices are at least as likely to form a useful and independent part of it as any other members. Such *ex-officio* members can only, like any other members, act as Guardians at the regular meetings of the Board ‡ They have no individual or independent authority.

A person called "visitor" is named in Gilbert's Act; to whom vague and indefinite powers and duties are assigned. He also is chosen in open meeting by the parishioners. The Visitor and Guardian or Guardians, § thus chosen by the Parishioners

* See, among others, the cases cited in the note to p. 163.

† Coke 4 Inst. 276.

‡ 4 & 5 Wm. IV. c. 76, s. 38.

§ See 33 Geo. III. c. 35, s. 2, and 41 Geo. III. c. 9, s. 1. There is an inhe-

under Gilbert's Act, form a corporation in each Parish where the Act is adopted. In that capacity they can sue and be sued, take and hold or lease lands, etc. etc. This fact is important, as one among the many illustrations of the capacity of Committees appointed by Vestries to become and be a corporation; a suggestion which has recently been ignorantly ridiculed by those seeking further to curtail and shackle independent parochial action and the practice of efficient Local Self-Government. Even the New Poor Law recognizes the Boards of Guardians as Corporations,—whether in Unions or single Parishes.*

The specific functions and powers of Guardians under Local Acts depend, in each case, on the precise terms of the Act. These differ greatly in different places, according to the circumstances of the place. Though it has been seen that they are brought under the control of the Poor Law Board, and liable at any time to its interference, and thus have no real independence, they unquestionably have all the powers that the local Acts give, *except where* these are thus interfered with by any rules or orders of the Central irresponsible Board. The same remarks apply to the Guardians under Gilbert's Act. As to the Guardians of Unions and Parishes under the New Poor Law Act, it has been seen that they have not even the shadow of separate and original authority.† They owe their origin to the Central Board's will and pleasure. Their very number and their duties are such, and such only, as the Central Board pleases to "prescribe." Every shadow of constitutional principle, and of the Common Law as to Local Self-Government, is set at naught and overridden by this system. It would be out of

rent vice in Gilbert's Act and these Acts, however; inasmuch as the consent of Justices is made necessary, in addition to that of the inhabitants; and the Justices select from (though limited in their selection to) those nominated by the Parish. The "Guardians" are also too few. Hence those Acts have not been very generally applied. Salaries are affixed to the office of these Guardians at the pleasure of the parishioners.

* 5 & 6 Wm. IV. c. 69, s. 7.

† Even in case of flagrant outrage committed by a master upon a servant, the Guardians (who till very lately could not prosecute at all) are not allowed to prosecute without an apparatus of certificates and services; which itself disallows any volition on their parts; and the requiring which will usually defeat the ends of justice. 14 & 15 Vict. c. 11. s. 6. See Local Self-Government, etc., p. 61. It was the case there named, that led to even this halting enactment.

place to dwell here at all upon the officers of these Boards of Guardians.* They are, in no sense, Parish Officers. They all owe their existence and appointed duties, not to their nominal masters, but to the Central irresponsible Board. Their retention of office depends on the breath of the latter, not on the discharge of their duties, or neglect of their duties, to the former. Neither gratitude nor responsibility binds them, either to the Parish or the Board of Guardians. Thus every bond of mutual sympathy or of wholesome neighbourship, is carefully provided against being let grow up. They are, in common with the Board of Guardians itself, simply parts of the functionary apparatus of a cold and hard bureaucratic system.

* Among these are the Clerk to the Guardians, Treasurer of the Union, Chaplain, Medical Officer for the Workhouse, District Medical Officers, Master of the Workhouse, Matron of the Workhouse, Schoolmaster, Schoolmistress, Porter, Nurse, Relieving Officers, Superintendent of Out-door Labour. (Order of 24th July, 1847, Art. 153.) The very enumeration carries unanswerable proof of the absurdity of the system, and of the mere pedantry and narrow-mindedness of its authors.

SECTION VIII.

COLLECTORS.

FEW Parish Officers are of older date than Collectors. One of the most interesting recorded cases that remains to us, illustrating the powers of the Parish at Common Law, as an institution of Local Self-Government, is that of an action arising out of a distraint made by Collectors chosen, by that name, at a meeting of the Parishioners, to gather in a tax made upon all the Parishioners under a Bye-Law or Ordinance of the Parish. This case was adjudged upon in the year 1371—nearly five centuries ago;—so ancient is the custom and recognized function of the Parish to manage its own affairs; to tax itself for all works for the common good of its neighbourhood; and to take all necessary steps, and appoint officers invested with full powers, to collect and levy such tax. The only issue allowed to be raised in that case was the fact of the assent of the Parish to the Bye-Law; that is, whether or not the rate was actually made. The power of the Parish to invest its own chosen Collectors with full authority to distrain, if necessary, is not pretended to be even questionable.*

An infinite number of other illustrations might be quoted, to show that the appointment of "Collectors" has always been a customary thing in Parishes, and that this has always been recognized and supported by the Common Law. It is sufficient to add, that the name and functions of these officers are found recognized in 27 Henry VIII. c. 25, in reference to moneys appropriated for the Poor; and also, as already mentioned,† in

* Year Books, 44 Edw. III. fo. 18 and 19. As to the power of distraint, incident *as of course* to the power of making an amercement or tax, see 8 Coke's Reports, pp. 40, 41, etc., and 11 Coke, 45 (*a*), etc.; and illustrations after, Chap. VIII. Sec. 7. A brief quotation from "Doctor and Student" will be enough in this place. "If a township be amerced, and the neighbours by assent assess a certain sum upon every inhabitant, and agree that if it be not paid by such a day, that certain persons thereto assigned shall distrain;—in this case the distress is lawful."—Dialogue II. c. 9.

† Before, p. 149, note †. See also, I. Strype's Annals, p. 463.

5 & 6 Edw. VI. c. 2; 5 Eliz. c. 3, etc. Old parish records, well kept, often contain regular mention of the choice of "Collectors" as one of the sets of annually elected officers.

Where, therefore, modern Statutes name Collectors, it is either a mere re-declaration of what the Common Law has already long recognized, or there is an attempt at the innovative fettering and restraint of those functions of self-management which the Common Law has always sanctioned. The Highway Act (5 & 6 Wm. IV. c. 50)—which is, in many of its provisions, one of the most constitutional Acts, affecting Local Self-Government, that the present century has seen—is an example of the former. By section 36 it is declared, *suggestively*,* and simply in affirmance of the old Common Law and Practice, that the Surveyor of any parish,—*having first obtained* the consent of the majority of the inhabitants in Vestry assembled,—may appoint a collector or collectors of the rates, and remove him when necessary, and pay him such salary as the said inhabitants in Vestry assembled shall think reasonable.† Thus the Surveyor has no power in this behalf independent of the Vestry.

The collector of Highway Rates thus appointed, has full powers of distraint, subject to certain formalities securing uniformity of method.‡ He is of course bound to account to the Surveyor for all moneys received by him, and to produce lists of defaulters. He is severely punishable for the neglect of these duties.§

The appointment of Collector of Church Rates, or of any other Rate determined on by Vestry, also remains, as it always was, in the hands and under the entire control of the Vestry. And whenever a Church Rate is made, care should be taken to appoint such collector, in order to avoid delay and expense.¶

With respect to Poor Rates, it has already been seen that the old Law expressly recognized the right of the Vestry to

* See before, p. 134.

† This appears to have been precisely the way in which the Collectors of Poor Rates were appointed under 5 & 6 Edw. VI. c. 2, and 5 Eliz. c. 3, etc. The Head officers of the Parishes appointed them, under those Acts, in the presence of all the inhabitants;—which of course means, on the choice and assent of the latter. The old cases, and old Vestry Minute Books, put it, simply, that the Collectors were chosen by the inhabitants.

‡ Compare 5 & 6 Wm. IV. c. 50, ss. 34 and 36. See also 12 & 13 Vict. c. 14.

§ 5 & 6 Wm. IV. c. 50, s. 38.

¶ See after, Chap. VIII. Sec. 5.

assign the duties of Collector of Poor Rates to whom it pleased. At Common Law, every Vestry appointed its own Collector, at will, for this or for any other matter of collection. The Statute 59 Geo. III. c. 12, did but re-declare this power, and suggest its universal exercise.* The Poor Law Board, soon after its own appointment, attempted to control this matter; to take the collectorship out of the hands of those whom the collection alone concerned, and to enforce the appointment of these officers by the Guardians; that so the officers thus appointed might be entirely subject to its own caprice. This attempt received however an unexpected check from the Courts of Law; the Judges declaring, not only that the attempt was unwarranted by Law, but that making such officers accountable to the Guardians, instead of to the Overseers of each Parish, is plainly incompatible with the safe and correct fulfilment of the office of such Collector.† Upon this, and notwithstanding this expression of opinion by the Judges, an Act was passed, as already noticed, legalizing all previous illegal orders made by the Poor Law Board, and all the illegal appointments made under them, but not giving any power to make new Orders. Finally, a still later Act, also fully noticed before, enables the Poor Law Board to make an Order for the appointment of a Collector for any Parish in their Union by the Guardians, *if the Guardians request it.*‡ In this case, the absolute control over the Collector, his mode of appointment, salary, functions, tenure of office, and everything else, rests with the Poor Law Board.§ If such a Collector is appointed, the Parish cannot appoint one for *the same purpose*,—that is, as Collector “of the Poor Rates.”|| It extends no further. The Poor Law Board has no power beyond the letter of these Statutes, while the Parish retain all their rights and powers, except as thus much expressly interfered with. This branch of the subject has been so fully entered

* The express object of appointing the officer named “Assistant Overseer” usually was, before the New Poor Law, that he might act as Collector; being paid for his labour in collecting the rates, instead of the Overseers having to undergo that labour unpaid. See 59 Geo. III. c. 12, s. 7; and fully hereupon before, Sec. 6.

† *R. v. Poor Law Commissioners*, 9 A. & E. 911. See the remarks of Patteson J. in that case.

‡ See before, Sec. 6 of this Chapter; particularly pp. 162, 163 and notes. § 7 & 8 Vict. c. 101, s. 62. See before, pp. 173, 176, 177.

|| 2 & 3 Vict. c. 84, s. 2; and 7 & 8 Vict. c. 10, ss. 61 and 62.

into already, in treating of Assistant Overseers, that it must be needless to dwell more upon it here. It need only be added, that when men's affairs are better conducted and attended to, by those concerned being taught and encouraged to neglect them, and disabled from attending to them, than by the responsibility of well discharging them being fixed upon themselves, and made to be constantly felt; and when the right way for men's affairs to be well managed is to allow others, over whom they have no control, and who have no interest in the results, and no responsibility to them, to be irresponsibly set over them to manage those affairs for them; then—but certainly not till then—will the system attempted to be imposed, as to the appointment and control of Collectors, by the New Poor Law, prove itself a sounder, and wholesomer, and more beneficial system than that recognized for so many ages by general practice and the Common Law.

Whenever a Collector is appointed, be it for whatever Rate it may, proper *Security* should be required to be given by him to the other Parish Officers, for the faithful discharge of his duties, before he is allowed to begin the actual work of Collection. In the case of Highway Rates, the Security will, with obvious propriety, be given to the Surveyors;* in the case of Church Rates, or any other rate made by any Bye-Law of Vestry, to the Churchwardens. If the Collector of the Poor Rates be the Assistant Overseer, appointed under 59 Geo. III. c. 12, s. 7, the security will be given to the Churchwardens and Overseers. If the Poor Rates of the Parish be collected by a Collector appointed by the Guardians, under the vicious New Poor Law system above alluded to, he is entirely irresponsible to the Parish. His salary (though of course paid by the Parish), his tenure of office, and the mode of discharging his duties, are ordered and controlled by the Poor Law Board; and the Security is to be given to the Board of Guardians, who alone can put the same in force.†

In taking security, it is a good rule never to accept less than two sureties. Thus is loss less likely to be incurred, and collusion less possible. The bonds should not be required to be excessive in amount, but such as will, in the case of either surety, fairly cover any sum that the collector can ever have in

* And see 5 & 6 Wm. IV. c. 50, s. 37. No stamp is needed.

† 7 & 8 Vict. c. 101, s. 61.

his hands at one time, as well as any probable amount of costs of proceedings. The sureties should be renewed as often as there is any change of circumstances or arrangements; for, though the Bond will often continue legally available under certain changes, and even Bankruptcy will not enable a man to throw off his direct responsibility under such a Bond,* the distinctions in these cases are narrow, and the experiment of relying on them will be hazardous, and generally prove expensive; while no safe collector will ever find difficulty in renewing his sureties every year, if that, which will be a very wholesome rule, should be required of him. It must always be remembered, that the more persons there are, and the more nearly interested in a man's honesty and well behaviour,—and, by the same rule, the more frequently they are reminded of that interest,—the more watchfulness and therefore safety will there always be, that he may not be led astray by any of those temptations which fall in the way of every man.

* See *Cust v. Armstrong*: Exchequer, 1 July, 1856.

SECTION IX.

AUDITORS.

To the proper and satisfactory management of any business or affairs involving the outlay of moneys, nothing is more essential than a sound and unevadible system of making up accounts. This is no less necessary in Parish affairs than in those of any private person. Individual officers will have an effectual check put upon extravagance, and also upon neglect, only when they have regularly to produce accounts, with vouchers, of all receipts and expenditure; and when they know that these will be gone over, item by item, and tested and reported on.

In Parishes where, from their small size or the thinness of population, the Vestry meetings consist of but few, the business will seldom be heavy, and the numbers will not be too great, nor the accounts too complicated or numerous, for an actual audit of all accounts to be made by the full Vestry itself. But these cases will now hardly be found, except in merely rural parishes. In other cases, the laying accounts before the full Vestry, if that alone is done, will be little more than an evasion of responsibility; as the numbers are too great, and the business will have become too extensive, for anything like a true audit and testing of the accounts to take place.* In all such cases, the proper course is, that there shall every year be chosen, among other Parish Officers, but separate from all others, a Committee of Audit; whose duty shall be, to have all the accounts of all the officers, trustees, etc., of the Parish, put in their hands, and to go over each of these, item by item; comparing each with the vouchers on both debit and credit side; reducing each to a clear debtor and creditor balance-sheet; and laying the same, with a general report upon the whole,—calling attention to any special matters needing notice,—before a full Vestry expressly summoned to receive such Report. Thus the accuracy of every account has a careful test applied to it. The correctness of all payments, as well as of all receipts, is

* See before, p. 114.

ascertained : none of the former can be improperly made, none of the latter improperly evaded. Every case of doubt or question, on either side, will be laid before the full Vestry, and its opinion taken thereon, on a distinct issue. At the same time, the Vestry will form a real and convenient court of appeal, if either any officer complains of hard measure as having been dealt him by the auditors, or any parishioner desires to raise a point on any matter within his knowledge, or as to which he desires special information.

This course has long been taken in most parishes.* Auditors have been appointed, in accordance with the Common Law powers and functions already shown to belong to Parishes. Bye-laws such as the following will be found on many Vestry Minute-Books :—

“Resolved : that in future the several accounts relating to this Parish, be audited by a Committee appointed for that purpose ; and that a fresh Committee be appointed on the usual day for the nomination of Overseers.”

To the same end we find such entries as the following :—

“That the Vestry Clerk do call upon all officers for their accounts, and vouchers for their disbursements ; and that he do carefully examine the same, and enter them in a book, preparatory to a Vestry being called for auditing such accounts.”

“That a Book be kept at the Vestry, for the express purpose of entering the accounts of the different Officers, *after* they have been audited, and sanctioned by the Vestry.”

“That the Vestry clerk do, on or before the 5th of January, require every Trustee or Trustees of every Parish Estate, or Charity, to deliver in their accounts, made up to the 31st of December : and that a Book be kept for the entry of such accounts.”†

These Bye-Laws, all of which are original and genuine, present a very complete outline of a sound system of audit ; and provide for what is of course essential, the record of its result.

The Committee of Audit should always meet in the middle of March in each year, at the latest, in order that it may have full opportunity of going over the accounts, and presenting an accurate report upon them to the Easter Vestry.

* The Act 27 Hen. VIII. c. 25, s. 14, recognizes such a Committee of Audit of the Collectors' Accounts, to consist of the Churchwardens and four or six others.

† See after, Chap. VII. Sec. 12.

Every officer should be required to bring in his accounts to this Committee of Audit every year. If he refuse, or if (either on such refusal, or on some defect found) the Vestry do not choose to pass his accounts, the course is simple. All parish funds belong (on behalf and to the use of the parish) to the churchwardens.* These can proceed against the late churchwardens, or any other withholders of property or funds. In the same way, the incoming Surveyors can proceed against the late Surveyors for any balance which, by the non-allowance of the accounts by the Vestry, remains due to the Parish.† And so in other cases.

It should be remarked that it is essential to a true audit, that it start from an admitted and fixed Basis. That is to say; if it is a new account, of course it begins at the beginning,—which is blank on each side: if it is a current account, the basis of the former year must be the first point vouched on each side. The voucher of this will be the Balance-sheet of the last year, as audited by the Audit Committee and passed by Vestry. If, through any omission or previous irregularity, no such voucher exist, the Vestry must determine some datum, on each side, which shall be agreed to be taken as the fixed starting-point or Basis for all future audits. That being once done, the course will thenceforth be clear.

For all payments; the receipts, together with the votes of Vestry in case of special work ordered or of regular salaries, will be the vouchers. For receipts; the Rate Books, or the tables of fees, or other similar documents, compared with corresponding entries as to defaulters, in the one case, and matters done, in the other, will be the vouchers. In each case, the consideration of the regularity and good faith of the matter of which the *fact* is thus vouched, should form an essential part of the audit and report. Else it were merely mechanical; no security whatever to the Parish; no check whatever on irregularity.

In the case of any Law Bill incurred in Parish business, any Overseer may require it to be taxed by the Clerk of the Peace.‡

* Before, pp. 99–101.

† See before, p. 112, as to the Surveyors' accounts; p. 99, as to the Churchwardens' accounts; p. 130, as to the Constables' accounts; p. 139, as to the accounts of the Inspectors of Lighting.

‡ 7 & 8 Vict. c. 101, s. 39.

Several late Acts of Parliament, adopting the common practice as to auditors, make it an express provision that auditors of the accounts shall be appointed by the Parish. Such is the case in Hobhouse's Act, the Burial Act, etc.* As these only apply in the special cases to which they relate, they do but serve, now, to illustrate the more universal Common Law practice whence this provision in them is borrowed.

It has been already seen† that the Overseers' accounts are audited by special auditors. As this is not a Parish Audit, it would be out of place here to make more than a general reference to it. It is enough to say that, in case of the Overseers' being dissatisfied with the result, they may appeal to the Court of Queen's Bench to revise the auditors' decision.‡ In the case of any attorney's Bill, they must, in order to be able to do this, take care that it has been taxed, before the audit, by the Clerk of the Peace, or it will be too late to appeal against its disallowance.§

It must be added that the last-named auditors are not independent. They are, in fact, one-sided; being entirely dependent, like all other paid officers under the New Poor Law System, on the mere caprice of the Poor Law Board—a caprice which that Board has exercised in the most arbitrary manner.|| Such auditors differ totally from such true auditors as above-named, elected by those concerned, to examine and test, without quibbling technicalism or pedantic distinctions, the accounts of officers in the faithful discharge of whose duties all are equally interested.

* See the Chapter on Parish Committees.

† Before, p. 153.

‡ 7 & 8 Vict. c. 101, s. 35. There are also powers of appeal to the Poor Law Board (*ib.* s. 36, and 11 & 12 Vict. c. 91, s. 4); but these are of little practical value, and merely put a further range of arbitrary caprice in the hands of that Board.

§ 7 & 8 Vict. c. 101, s. 39. See *R. v. Hunt*, Queen's Bench, 8 May, 1856.

|| See before, pp. 173, 174, and 177. In the Session of 1856, the Poor Law Board attempted, in its uniform spirit (see before, p. 165), to get an Act passed, taking away from Boards of Guardians even the little voice they have as to Auditors, under 7 & 8 Vict. c. 101, s. 32; and making these officers the direct nominees, as well as the dependants, of the Board. Happily, this fresh and characteristic attempt was rejected by Parliament.

SECTION X.

REGISTRAR OF BIRTHS, DEATHS, AND MARRIAGES.

THE practical provisions made for effectual Registration of Births, Deaths, and Marriages, will be more properly stated in a later chapter than in the present. As, however, Officers exist, usually having Parishes as their limits, whose special duty it is to make these registrations, it is proper shortly to state the source of their authority, and the nature of their duties.

The importance of such Registers being kept, has long been felt. Such Registers exist, of great antiquity, in very many parishes. So long ago as 1547, it was enjoined that "the parson, vicar, or curate, and parishioners of every Parish within this realm, shall, in their churches and chappels, keep one book or register, wherein they shall write the day and year of every wedding, christening, and burial, made within their parish for their time, and so every man succeeding them likewise; and therein shall write every person's name that shall be so wedded, christened or buried. And for the safe keeping of the same book, the parish shall be bound to provide, of their common charges, one sure coffer, with two locks and keys, whereof the one to remain with the parson, vicar, or curate, and the other with the wardens of every Parish church or chappel, wherein the said book shall be laid up: which book they shall every Sunday take forth, and, *in the presence of the said wardens*, or one of them, write and record in the same all the weddings, christenings and burials made the whole week before;*, and, that done, to lay up the Book in the said coffer as afore. And for every time that the same shall be omitted, the party that shall be in the fault thereof, shall forfeit to the said

* The terms of this article, so cautious in requiring the entry to be made in the presence of the Churchwardens, cannot fail to remind the careful reader of the terms in which Lambard informs us that "the later laws have borrowed some use, in a few easy matters, of spiritual ministers, chiefly for the help and readiness of their pen."—Lambard's 'Duties of Constables,' etc., p. 67.

church, 3s. 4d. to be employed to the poor men's box of that Parish."*

A statute of William III. made the keeping of such a Register obligatory on the Minister of every parish and place.† But the Statute itself was passed for the grant of a tax, to assist in carrying on the war then pending. This special enactment was only incidental. And it was but the declaratory enforcement of the above named already long used custom,—simply re-declared there in order to prevent evasion of the tax.

Later Acts have, for the most part, changed the person of the Registrar. The Minister still remains the Registrar of Marriages according to the rites of the Church of England. But special Registrars are appointed for registration of Births and Deaths and of other modes of Marriage. These Registrars are not, however, any of them, appointed by the Parishes. Boards of Guardians are required to divide the Union, or Parish if it be a single Parish, into districts, subject to the approval of the Registrar-General. Superintendent Registrars and District Registrars of Births and Deaths, are then to be appointed by the Boards of Guardians, in obedience to rules and qualifications laid down by the Registrar-General. In default of appointment by them, it is made by the Registrar-General. Every such office is held, also, only during the pleasure of the Registrar-General and every appointment of an Officer of the Union to be such Registrar, is subject to the approval of the Poor Law Board.‡ Thus there is, in fact, no sort of volition or discretion left to the Boards of Guardians in this, any more than in any other matter; while the Parishes are altogether treated as incapables, not to be thought of. This is not, therefore, an office which can

* Injunctions of Edward VI., Sparrow's Canons, p. 5. It is curious that the corresponding article in the Injunctions of Elizabeth (otherwise exactly the same as the above) makes the fine "to be employed *the one half* to the poor men's box of that Parish, *the other half* toward the repairing of the church."—*Ib.* p. 70. See also Burnett's History of the Reformation, vol. i. p. 180 of the Collection of Records; where the whole forfeit is to be employed on the reparation of the church.

† 6 & 7 Wm. III. c. 6, s. 20.

‡ See 6 & 7 Wm. IV. c. 86, and 1 Vict. c. 22. Though it is professed that the Clerk to the Guardians is *excepted*, and that he is to be Superintendent Registrar by virtue of his office, this exception is merely nominal, as the Clerk to the Guardians is, *in that capacity*, dependent on the pleasure of the Poor Law Board.

properly engage more of attention in treating of Parish Officers. It need only be added that, while the Superintendent Registrar of Births and Deaths is also Superintendent Registrar of Marriages by virtue of his office, he, and not the Board of Guardians, is to appoint district Registrars of Marriages;* but the number he may so appoint is limited by the Registrar-General, and the appointments themselves are subject to the approval of the Board of Guardians. The tenure of the office is subject to the pleasure of either the Superintendent Registrar or Registrar-General.

* 6 & 7 Wm. IV. c. 85, s. 17; 7 Wm. IV. & 1 Vict. c. 22, s. 22.

SECTION XI.

BEADEL.

THE Beadel gives us one of the instances in which an old Saxon name is retained, expressing, at this day, the same office and duties, or nearly so, as it originally did. The Beadel of the Parish is, strictly, the bidder to, and attendant on, the Parish meetings.*

Like all other proper parish officers, the Beadel is chosen by the Parish, in Public meeting assembled. Like other Parish Officers also, he holds office during the pleasure of the Parish ; though the more usual course is, that he is chosen at Easter, at the same time as the Churchwardens and other officers, to hold the office for a year. Unlike those cases, however, this appointment is commonly renewed, from year to year, in favour of the same person ; and is so, in fact, held during good behaviour. But the annual vote of appointment should always be taken, in order that the sense of responsibility may be duly maintained. Notwithstanding such appointment, the Beadel may, as any other Parish Officer may, be dismissed at any time, if the Vestry find that the interests of the Parish need it.

The office of Beadel is one of those already alluded to, which

* It cannot be without interest to the reader who cherishes liberal inquiries, to be reminded that, in the ancient Anglo-Saxon version of the New Testament, the word "beadel" is used in its modern sense. Thus:—"Ðy-læs he þe sylle þam deman, and se dema þam *bydele*, and se *bydel* þe sende on cwertern" (lest he hale thee to the judge, and the judge deliver thee to the officer, and the officer cast thee into prison). Luke xii. 58.

There are two Anglo-Saxon words ; *beodan* and *biddan* ; both of which appear, in our corrupted spelling, as *bid*. But "bid" has now two senses in common use, exactly corresponding to these two original different words. There is *bid*, to *command*.—and *bid*, to *invite*. We *bid* a servant to do this, or that ; and guests are *bidden* to a feast. *Beadle* has the latter sense. It seems to be from *biddan*, not from *beodan*. The past tense of *biddan* is spelled "bæd." Our present spelling of "beadel" or "beadle" is this word, the personal termination—"el" being added. "Bydel," above quoted, is merely a corrupt spelling, such as are often found in some, and especially the later, manuscripts.

have a salary commonly attached to them.* The reason of this is, that its duties are those of a servant, instead of representative and involving discretion, as are those of Churchwardens, Surveyors, Overseers, and others. The Office is usually filled, therefore, by persons of good character in the Parish, who are able to discharge the duties of the office in addition to their ordinary calling. The appointment to it is a mark of the confidence and goodwill of the Parishioners, which is always an object of honourable ambition, though the salary itself is generally but trifling. The amount of salary is, like the appointment, entirely in the hands of the Vestry.

The duties of the Beadel consist in ministerially making known the summons to all Parish Meetings; whether this be done by delivering notices from house to house, as in some parishes†; or by properly affixing the notices, signed by the proper Officers, on the places where they are, in all parishes, required to be affixed.‡ He should also serve all summonses for meetings of Committees and otherwise. And he is bound to attend at every Parish Meeting, and elsewhere when required by the Vestry, in order to summon any person or officer wanted, or to execute any other service, as messenger or otherwise, which the exigencies of the meeting require.

It is also the duty of the Beadel to fulfil such requisitions, of a similar nature, from the Churchwardens and other Parish Officers, as arise in the course of their duties.

The Beadel usually summons the jury for coroner's inquests, and attends the inquest; duties arising out of the last-named position of his office with respect to the principal Parish Officers. The summoning of that jury is the business of the Constable. He, as a Parish Officer, does it, ministerially, through the Beadel, in the same way as the Churchwarden, the Summoner of the Vestry, issues the summons to a Vestry Meeting through the ministerial hands of the Beadel. It has always been an important part of the duty of the Constable to attend every Inquest in the Parish. The Coroner's Jury has, as will be hereafter shown, a direct reference to the Institution of the Parish. Hence, it is entirely correct for the Parish Beadel to do all that is needed towards and during the inquiry.

It has been already pointed out that it will be well to take

* See before, pp. 161.

† See before, p. 55.

‡ See before, pp. 54, 55.

care that the Parish Beadel has a regular appointment as constable.* Even without such appointment, however, the common law recognizes him as having some of the powers of the Constable, and as having always the duty to aid that officer.†

It is common, but not universal, for the Beadel to attend at the Parish Church during religious service; though the origin of his office, and the main part of his duties, are entirely secular, and have no connection with any ecclesiastical concern. His attendance at the church during religious service is itself, in such cases, nothing more than a matter of ceremony and form, not one of any active duty; though, should any brawling or disturbance arise, he may properly be called on to help in restoring order.

At the same time it must be remarked, that it is always competent to the Vestry, in appointing Beadels, and fixing their salaries, to give any special and additional duties in charge to them. And this is often done; such as attending on schools, passing vagrants, etc. etc. Some of the duties formerly fulfilled by special officers appointed at the Court Leet, are often now appointed to be fulfilled by the Beadel,—such as those of the very useful offices of Common Driver,‡ Hayward,§ etc.

It should be remarked that, while there are, it is apprehended, one or more beadels in every parish, and therefore the name is commonly connected with the idea of a parish officer, beadels are not found only in Parishes. Being an entirely secular office, it will naturally be found in other ancient institutions analogous to Parishes. Thus there are *beadels* attached to many ancient Boroughs and Corporations. There are, indeed, beadels to the separate wards of the City of London, and elsewhere. And so in many other instances. The Beadel is, in short, an officer whose existence is proof of the fact and long practice of active Local Self-Government.

* Before, pp. 128, 130. † See *Lawrence v. Hedger*, 3 Taunton, 14.

‡ That is, clearer of the Commons from intruding cattle. He takes to the pound cattle found straying on the roadside, etc.

§ That is, the Warden or watcher of Bounds and Enclosures—from Anglo-Saxon “hege” (hedge), not “heg” (hay). Like the last named, this is an office essentially constabular in character. It always formed an article of inquiry at the Leet and Town, whether any Hedges, or “Hayes,” had been broken. See Lambard’s ‘Constable,’ p. 38; Kitchin, ‘Charge in the Court Leet,’ Art. 18; etc.

SECTION XII.

SEXTON.

THE Office of Sexton is one which, so far as its chief and characteristic duties are concerned, the conditions of humanity make absolutely essential, whatever the opinions, teachings, or religious forms of men may be. It is rightly a parochial office; because it is in the discharge of a common duty, and for the necessary common benefit of the living, in every community, that burial is provided for the dead.

This officer is always to be chosen by the Parishioners, in the same way as other parish officers. An occasional permissive courtesy has, here as elsewhere, been abused into a claim of right; and the usurpation has, though only very lately, been attempted to be set up, in some parishes, of the Minister assuming to himself to make the appointment. No sanction for this exists. It is unsupported by any authority whatever,* and

* The case usually cited (*R. v. Stoke Damerel*, 5 A. and E. 584) is not, in fact, an authority at all in the matter. Certain *dicta* were there uttered, but no grounds nor authorities were given for them; nor were the Principle involved, nor the authorities as to the Fact and the Law, investigated in that case. Those *dicta* are, therefore, in no sense, an authority as to the Law on this subject. The same observations apply to the "presumption" spoken of in *Cansfield v. Blenkinsop*, 4 Exch. 234. Such a "presumption" is shown, above, to be inconsistent with the facts. The language of Archbishop Whitgift, on p. 201, is, in itself, a conclusive answer to any number of such *dicta*.

In a much later case than either of the above, the following cautious terms were used:—"The Canon was appealed to on both sides, as determining the right of appointment; and the question therefore is, upon the proper construction of it." *Pindar v. Barr*, 24 Law Journal, Q. B. 33. These words plainly show the desire of the Court to be distinctly understood as not expressing any opinion whatever as to the validity of the Canon. The judgment in the same case contains the remarkable avowal, in a tone of *complaint*, that "we have not been furnished with authorities." (*Ib.* p. 34.) The careful reader will therefore see that none of these cases even professes to touch the force of those unequivocal declarations of the Law and the Fact which will presently be quoted. It would not be in their power to weaken or invalidate these: but it must be satisfactory to every one who reverences the purity of the administration of the Law in England, that this is not attempted by them; and that any apparent inconsistency between these and the older de-

is clearly contrary to reason, analogy, and Principle. There is not the shadow of a pretext for the existence of any right in the Minister to appoint the Sexton. The Salary and Fees of the Sexton (unless fixed by custom) always depend on the pleasure of the Vestry. In every case, the parishioners pay them. It is a matter of plain Common Right, needing no argument nor proof, that they for whom service is fulfilled, and who pay for its fulfilment, are those with whom the appointment and choice must always be. This is, however, also the clear Common Law. Nor is the fact of the custom less clear. The words of Archbishop Whitgift, which will be quoted in the next Section, leave no doubt as to the uniform and undisputed practice on this subject, before the systematic course of ecclesiastical usurpation began in England.* No "custom" can have grown up through such usurpation, in derogation of the original right, law, and practice. No inability or indisposition, for a time, to contest the persevering attempts at ecclesiastical encroachments, can grow into a sanction of the sacrifice or abandonment of the original right, law, and practice.

The sexton is a paid officer; his salary resting wholly on the will of the Vestry. A woman may be sexton; and female parishioners may vote at the election of sexton.†

The principal duty of the Sexton consists in digging and preparing graves. He has also, often, the duty of keeping the church clean and swept; of opening the pews; of attending to the lighting of fires, and other things needed for the church; and of being present during service, to prevent any confusion or disturbance. A separate officer is, however, often appointed for all these latter duties.‡ The Sexton usually keeps the keys of the church.

By an extraordinary anomaly, altogether at variance with principle, and with the universal rules in like cases, it has been attempted to be set up, that the office of Sexton is a freehold

cisions is to be ascribed solely to the fact that the whole compass of the question has not been gone into in cases which, dealing with the matter only from a partial point of view, have been too hastily cited as amounting to a general declaration of the Law.

* See before, pp. 80, 82, 85, and the *notes* thereto.

† *Olive v. Ingram*, 7 Modern, 263; same case, Strange, p. 1114.

‡ In 2 Levinz, p. 18, it is explicitly said, and admitted by not being even disputed, that "*Parish Clerks* are to keep the ornaments of the church, and to register Baptisms and Funerals. But the *Sexton* is only to ring the Bells and dig the Graves; and *is only an officer at Will*, as the Cowherd or Swineherd of a Village."

office ; and that, therefore, if a Sexton be removed, even for misconduct, (as it has been seen that a Churchwarden, or any other officer, may be) a *Mandamus* will be issued to compel his restoration. Such a doctrine is unsupported by any true authority : it is inconsistent in itself ; and would, in practice, be attended with manifold public inconvenience. The notion of it has simply arisen from the unconsidered perversion and misapplication of the deduction from the facts of a special case. In a particular case, a *custom* was set up ; on which custom alone it was that the decision was founded. With the unhappy tendency which too often disfigures what ought to be the most enlarged of pursuits and the most liberal of professions,—the tendency, namely, blindly to follow bare precedents, instead of always keeping Principle in view, and looking always into the grounds (or want of grounds) of every precedent and case in point,—the mere judgment under these *special* circumstances has been blindly copied and re-copied, till it is often asserted to be the Law, in cases where the circumstances of that case do not exist ; and to which, therefore, the decision in it can have no application whatever. Instead of being an example of the general Law, the case in question is, in fact, an instance of *an admitted exception*. The only true deduction that can be made from it is, that, the *exception being there admitted*, the *rule* obviously is the other way. Had the decision been on the general Law, instead of being the result of the *exceptional* facts, it is self-evident that those exceptional facts would not have been stated, as they actually are, as the foundation of the decision.*

* The case thus always cited (Ventris, pp. 143, 153 ; 2 Levinz, p. 18 ; 2 Keble, 803, 807, 820) went expressly upon the ground of a certificate of *custom* being produced in the particular case, after the Court had already stated its doubts, “*because he was rather a servant to the Parish than an officer, or one that had a freehold in his place. But, upon a certificate*” produced, of the custom of that Parish to choose for life, the *Mandamus* was granted, just as (but no otherwise than) it would have been granted, as the Court distinctly stated, “*for a parish clerk, Churchwarden, or a scavenger,*” (Ventris, 143). And it is to be observed that the *Mandamus* was, in that case, to the *Churchwardens*, not to the *Minister*, thus again illustrating the point of right. This affords an instructive illustration of clearly bad law being raised up into common reception, by the mere blind repetition of a case which has nothing to do with general rules, save as an *exception* ; and which therefore really proves exactly the *reverse* of what it is thus quoted for. See Bacon’s Abridgment : *Mandamus C.* And compare 1 Cowper’s Reports, p. 413, and 1 Strange’s Reports, p. 115. In the last case, Mr. Justice Fortescue said—in exact consistency with the actual Law, as stated in the text

In point of fact, the Sexton is usually, and always ought to be, re-chosen every year, at the same time with other parish officers. The only reason why an apparent custom to the contrary has, in any case, grown up is, that, the Sexton's work being manual in character, it is natural that a man who has behaved himself well, should be kept on in the same employment. But this does not in the least degree imply that he is not to be removed, if he misbehave himself. The same remarks apply to his case as to that of the Beadle.* Even though the *custom* of an appointment for life can be set up, this does not affect the right of the Parishioners to remove the Sexton at any time. It is enough to quote the words of Lambard, to the same point, in regard to Churchwardens. "Although the usage and custom of the Parish be, that the churchwardens there shall continue in their office by the space of one whole year, or two years or more (as indeed some Parishes have such customs), yet upon such or the like misdemeanour found in them, may the parishioners at all times proceed to an election of new Churchwardens, and may remove the old."† What applies to Churchwardens, applies to every other Parish officer; but it plainly applies with peculiar force to officers who are paid by the Parish for the discharge of their duties. It behoves all who regard the right management of the affairs of the community, and the soundness and stability of our Institutions, to keep a constant care that no encroachments and abuses, of which the attempts made even as to the office of Sexton afford a striking illustrative example, are allowed to pass in silent acquiescence. It is a duty owing by every man to the public, to do what each one can towards the maintenance of the Law, the Right, and the public Principle involved in each case.

—"We ought not to grant a Mandamus [to restore to office] *without a certificate* that the Sexton was chosen for life."

It has been already seen (before, p. 41 note) that, under the New Parishes Act, 1856, the Sexton and Parish Clerk are made nominees of the Minister, in violation of the Common Law and of all sound principle. It is quite enough, on this subject, to refer to the clearly expressed opinion of Archbishop Whitgift, which will be found on page 201. By 59 Geo. III. c. 134, s. 10, the sexton and parish clerk of any separated part of a parish, are entitled to a share of the emoluments that would have belonged to the Sexton or Parish Clerk of the whole undivided Parish.

* Before p. 190.

† 'Duties of Constables,' p. 72. And see before, pp. 84, 85.

SECTION XIII.

PARISH CLERK.

THE name of this office is hardly distinctive: it is almost misleading. The "Parish Clerk" is not the clerk to the Parish, in the modern sense of the word "clerk." The functions of such an office are fulfilled by the Vestry Clerk. The Parish Clerk was, in the original intention of the office, confined to purposes connected with the services of the Church. Since the Reformation, certain secular functions have been attached to it. Thus, in certain Injunctions issued by Henry VIII., it is declared that, "forasmuch as the Parish Clerk shall not hereafter go about the Parish with his holy water, as hath been accustomed, he shall, instead of that labour, accompany the Churchwardens, and in a Book register the name and sum of every man that giveth anything to the Poor."* At the present day, it is required by the Standing Orders of both Houses of Parliament, and the duty of compliance is enforced by Statute, that Plans, etc., relating to private Bills, shall be deposited with Parish Clerks, and shall be received and safely kept by them;† —a dealing with the office in a purely secular way, and for purely secular purposes.

Before the Reformation, the Parish Clerk was, probably, often in holy orders; this being consistent with the more important part which he was called upon to fulfil in the service of the Roman Catholic Church.‡ The office is now usually, though

* Burnett's 'Hist. Reformation,' vol. ii. ; Records, No. 21.

† 1 Vict. c. 83. They are bound to allow inspection. See sec. 2.

‡ See, however, much reason to a contrary inference, in Ayliffe's *Parergon*, p. 409. The first reference to Lyndwood on that page, is erroneous. The actual reference intended, seems to be to Lib. 3, tit. 7, chap. ii. pp. 142, 143; where it is laid down that the Church, and not the Parishioners, should pay the clerk. Ayliffe somewhat misrepresents Lyndwood. It is beyond question that it is the Parish Clerk that Lyndwood speaks of, when describing the "*socium vel ad minus clericum*" who is "*deservire presbytero in altari; secum cantare, et epistolam legere*,"—that is, to make the responses.

On the same page of Ayliffe occurs another misapprehension. He re-

not exclusively, in the hands of laymen.* Whether or not it be so, however, the office itself is a lay and secular one, and not an ecclesiastical one.† The choice rests with the Vestry.

This office gives another example of the attempts that have been made at ecclesiastical encroachment since the Reformation. The very records pointed to by the advocates of ecclesiastical authority, to sustain their case, prove that these attempts have not, heretofore, been generally submitted to; but that, in the case of Parish Clerks, as well as in that of Churchwardens, the Parishioners have refused to yield the right of election.‡

Canon 91, of A.D. 1603, attempted to give the power of choosing the Parish Clerk to the "Parson or Vicar." The terms in which it is put in this canon, themselves show that, like other things of the same nature in those Canons, this was an innovation. Were it not so, indeed,—were it not an attempt to make a new Law, *over-riding the Common Law*,—no such Canon would, clearly, have been made. It has already been shown that neither those nor any other Canons have the

presents "Œditui" as meaning Parish Clerks, in the Canons of Elizabeth. The passage has already been quoted on p. 79 of this Book. There cannot be the least doubt that it refers to Churchwardens, and not to Parish Clerks; though the quoting of it by Ayliffe in reference to Parish Clerk is a proof of his view of the custom. This error is, however, not quite so remarkable as that of Tyrwhitt, and several others, who have taken and quoted Chaucer's allusion to "Church-reves" (beginning of 'The Frere's Tale'; and see before, p. 69, *note* **), as meaning Church-*reeves* or wardens. I take it to mean exactly the reverse. It is clearly, I apprehend, church-*robber*, from A.S. "refa" *robber*, not "ge-refa" *reeve*. The context, moreover, proves that this can be the only true interpretation.

* See 7 & 8 Vict. c. 59; expressly providing for the case of a person in holy orders being Parish Clerk. This Act does not in any way affect either the Common Law right and mode of election of Parish Clerks, or their tenure of the office. It chiefly relates to the incident of one in holy orders being appointed to the office. But it also gives power to the ordinary to deal with cases of wilful neglect or misdemeanour in persons not in holy orders, but holding this office. See sec. 5.

† Pitts v. Evans, 7 Mod. 254; Tarrant v. Hexby, Burrow, 367; and the other cases cited further on.

‡ See particularly *note* (c) to p. 214 of Gibson's Codex, vol. i.; in which a passage, called "very remarkable," is quoted from the Register of the Convocation of 1640. And it certainly is "remarkable." It clearly prove that the parishioners then asserted and exercised the right of choosing the Parish Clerks, as well as the Churchwardens. See this passage already alluded to before, p. 85, in reference to Churchwardens. But it also names Parish Clerks in terms.

slightest binding force upon the Parishes.* The same points and authorities that were marshalled in connection with the subject of the Canons, in treating of Churchwardens, apply to the present case. The repetition of them is therefore needless here, though special attention must be recalled to them. This Canon has, no doubt, like that touching churchwardens, had the effect of procuring the parishioners' right of election to be wrongfully over-ridden in many Parishes. At the same time, the attempt to assert the right of appointment in the incumbent, by virtue of this Canon,—a right which would necessarily be *everywhere* indefeasible, if the Canon were Law,—has been often unequivocally defeated. The right of this election by the Parish remains good, against all the Canons. As in the case of Churchwardens, it is only where a custom to the contrary can be proved to have existed *before the date of the canon*, that the Parishioners can be ousted of their right of election. It is a matter of plain logical necessity that, either the canon is of force everywhere, in spite of any custom, or that it is wholly void everywhere. A canon would at least as much over-ride a special custom as it would the general Law. An alleged custom for the Minister to choose, is then a matter needing special proof, and is in no way helped by the Canon.† This has been many times tried and adjudged upon; and the terms in which one case is reported by Lord Coke, afford conclusive proof of how the usurpation was attempted, and has spread, merely through the means of this illegal Canon; and that the real control, as to the whole matter, is, by the Common Law of England, in the Parishioners. The subject is there dealt with on the grounds of general Principle,—not on the special facts of that case.‡

* Before, pp. 72 and following.

† See before, pp. 75, 77, 82, 86.

‡ "The parson of the parish, by colour of a new canon made at the convocation in the first year of the king that now is (which is not of force to take away any custom), drew the clerk before Dr. Newman, official of the Archbishop of Canterbury, to deprive him upon the point of right of election, and for other causes; and upon that it was moved at the bar to have a prohibition. And upon the hearing of Dr. Newman himself, and his counsel, a prohibition was granted by the whole court; because the party chosen is a *mere temporal man*, and the means of chusing of him, namely, the custom, is merely temporal, so as the official cannot deprive him; but upon occasion the *parishioners* might displace him. And this office is like to the office of a Churchwarden, who, although they be chosen for two years, yet for cause they (the parishioners) may displace them.

I have reserved until this place a document by Archbishop Whitgift, which is of the highest value as evidence of the *fact*, before and during his time, as to more than one of those offices with which the Canons of 1603 pretended to deal, including this office of Parish Clerk. Demonstrating, as this document does, the actual custom previous to those Canons, it adds cumulative proof to what has been already stated as to Churchwardens and Sextons, while it completely proves that the Canon 91, as to Parish Clerks, is wholly illegal and void. It will be rather too great a tax on our credulity to ask us to believe that, within the thirteen years that elapsed between 1590 (the date of this document) and 1603, the custom of England had changed in this respect. The Canon of 1603 thus stands unequivocally "contrariant and repugnant" to the Laws and customs of the realm."[†]

It appears that, about the year 1590, some one had sought to make a profit by getting a patent to appoint, or (after the manner of modern functionaries) to control the appointment of, Parish Clerks. The Lord Treasurer was wise enough to show this proposition to the Archbishop. The Archbishop was clear-sighted and patriotic enough to return his opinion in writing, in a very precise form; and nothing came of the design. This opinion shows, in the clearest way, that it was not then pretended to be doubted that the choice of Churchwardens, Sextons, and Parish Clerks belonged, of unquestionable right and practice, to the Parishioners; though, as to the two latter officers, the Minister sometimes voted among the Parishioners.[‡] All the reasons so lucidly and candidly stated apply to the right of the Parishioners only. It is plain that it was this which the Archbishop regarded as the main thing. The document is one of so much interest and value that I give the main parts of it at length.

And although that the execution of the office concerneth divine service, yet the office itself is mere temporal. He who is clerk of a parish is removable by the parishioners."—13 Coke's Reports, p. 70. See before, pp. 73, 85.

I put this case, as well as some quotations further on, in the shape of Notes, that the text may not be unduly swelled. The very great importance of the Principle involved in these illustrations and evidences, would make their omission not justifiable. Their number might have been greatly increased.

[†] See before, p. 72, etc. As to the Clerk, in all Churches built under 58 Geo. III. c. 45, and 59 Geo. III. c. 134, see sec. 29 of the latter.

[‡] See before, pp. 79, 80.

“Inconveniences in the petition moved, for a grant of the parish clerkships, or for surveying them.

“1. Law and custom hath in all parishes established the appointing of the PARISH CLERK and Sexton in the minister and in the parishioners. 2. Their service is to the minister in church matters, for the use of all the parishioners : therefore fittest to be chosen by them ; as it is observed EVERYWHERE. 3. They receive their fees and accustomed wages of the parishioners ; therefore a stranger cannot be obtruded well upon them : for, if any of another’s appointment be their clerk, they will think it hard measure that they should be forced to maintain him. . . . 7. These and such-like grants, as they are very extraordinary, so are they burdensome to the Queen’s subjects, and unprofitable for the commonwealth, and serve only for the private gain of private persons. . . . By the copy of the patent, which your lordship sent unto me, there is granted the buying of books, clappers of bells, and other necessities for the use of the church, at the parishioners’ cost and charges ; a matter most unreasonable. For so he may still poll them, and make what accounts he list, and they have no remedy. 9. Besides, the laws and Her Majesty’s *Injunctions* lay this trust upon the churchwardens of the parish, being of the substantiallest men, whom the rest think good to trust, and therefore do make choice of, to disburse their money in that behalf.”*

* *Strype’s Annals*, vol. iv. p. 45 (No. xxxv.). Further to illustrate how thoroughly acknowledged it has always heretofore been that the 91st Canon is unlawful and void, and that the choice of Parish Clerk is in the Parishioners, who have power to remove him at pleasure, I add a short extract from a work of great reputation, and which was published and went through several editions subsequently to the Canons in question.

“The Parish Clerk is an officer in the church too, but he is most commonly a lay man, and no ecclesiastical person : and his office is a *lay office*, and therefore he is to be chosen by the parishioners, and NOT by the parson or vicar alone, and he is removable upon cause from his office at their wills and pleasures. This appeareth by the book of 3 Ed. 3. Annuity 40, where it was ruled that the clerk of a parish was but a lay officer, and he was removable at the pleasures of the parishioners. So likewise was it adjudged in case of a prohibition in the Common Pleas betwixt Cundit and Plomer ; where the case was, that the parishioners of the parish of Saint Alphage in Canterbury did prescribe that, time whereof the memory of man was not to the contrary, they had used for to choose their parish clerk [which Whitgift states to be the custom “everywhere”] ; and, the ancient clerk being dead, they did choose the plaintiff Cundit clerk : and that thereupon the Vicar, by force of the new canon made 1 Jacobi (1603), did choose another clerk ; and

The office is one which must be filled ; a point which, though adjudged long ago, has now become obvious, without such decision, in consequence of the Standing Orders and Statute already alluded to.* These assume the existence, everywhere, of a Parish Clerk. The same remarks apply to the choice of this officer, who is a paid one, and to the duration of the office, as were made with regard to the office of Beadel.†

The Parish Clerk is paid either by annual vote of Vestry, out of funds at their disposal ; by customary fees ; or by a special rate made for the purpose. The usual course and custom aforesaid in the Parish, will commonly be the guide on this point.

Parish Clerks are sometimes sworn and licensed, after their appointment, by the ordinary. But this is not in the least degree necessary.‡ The office is in itself a temporal one, and

thereupon Cundit had a prohibition in the Common Pleas, upon a suit brought by the other clerk in the spiritual Court. And by Coke, Chief Justice, and the whole Court, it was adjudged that a prohibition should be awarded in that case ; *for the Canon was against the Common Law*, and particular customs are part of the Common Law. And it was further adjudged in this case that *the prescription should be preferred before the said new Canon, because by the prescription NO MORE WAS CLAIMED than, by the law of the realm, was DUE AND USUAL* ; and a prohibition was awarded accordingly.”—‘The Parson’s Law,’ (ed. 1641) p. 115. See also *Jermyn’s Case*, Cro. Jac. 670.

So Serjeant Chauncy, already quoted, p. 74, says (writing in 1700), that Parish Clerks “are lay officers, *and of common right elected by the Parishioners*, who are bound to pay their wages.” (History of Herts : Hundred of Odsey, Parish of Kelshall.) In the same place, he adds :—“At a synod held anno 44 Edw. III. a canon was made, that the parson of every church in England should appoint the Parish Clerk ; and at another Synod held anno 1603, there was a canon made to the same effect. Yet these canons shall not abolish the custom, where the Parishioners or Churchwardens have used to appoint the clerk, because that is temporal, which cannot be altered by a canon ; for the custom of the realm cannot be taken away, but by Act of Parliament : and a canon made against the Common Law, or the King’s Prerogative, is void.”

The sum of the whole is, as in the case of Churchwardens, that, as the Canon can originate no right, while the “due and usual” custom, “everywhere,” has always been contrary to the Canon, the onus of proving that there existed a custom, *before the Canon*, for the Minister to appoint the Parish Clerk, must always rest upon him. (See before, pp. 85, 86 *note*.)

* See before, p. 90, as to Churchwardens.

† Before, p. 190.

‡ It is interesting to find that the express reason given why this cannot be necessary, in a case where it came in question, is that, if it were, it “would be a transferring the right of appointment to all intents and purposes to the ordinary.” (Strange’s Reports, p. 942 ; and compare, *ib.* pp. 776 and 1108, as to the temporal office.) In our day, when centralization is spreading its baneful influence everywhere, it is the regular system to

therefore independent of ecclesiastical authority. The appointment carries with it an absolute right, irrespective of any ecclesiastical discretion ; and the rightfulness of the dismissal of any man from the office, can, in the same way, only be subject to the judgment of a temporal court. If improperly ousted by any Minister, a Mandamus will be granted to restore the Parish Clerk to his office. It has been already seen that the Parishioners have the entire power of dismissing him at their pleasure.

The direct original duties of the Parish Clerk are now chiefly confined to making the responses to the Minister.* It has been seen, however, that the very important secular function of being the Depository of parliamentary notices, and other important documents, has been cast upon him ; as have some others of the like nature. It is highly necessary, therefore, that he should be a man of trustworthiness and intelligence. Other Parish offices are also often united in the person of the Parish Clerk, as a matter of convenience and economy. Thus, the same person often unites the offices of Sexton and Parish Clerk.

make the assent of a central Board essential to action and appointments, as has been seen to be the case under the Poor Law Board (before, p. 173). The plain sense of our fathers saw and said that this was—and adjudged it to be unlawful *because* it was—a transferring of authority “to all intents and purposes” to the irresponsible central Board.

* But see before, p. 194, *note* ‡.

SECTION XIV.

VESTRY CLERK.

TOTALLY distinct from the Parish Clerk, is the Vestry Clerk. The former office, though a secular one, fulfilled ecclesiastical purposes in its origin, while secular functions have latterly become attached to it. The latter is wholly secular, as well in origin as in all its purposes. The Vestry Clerk is, in fact, the Secretary to the Parishioners, in the transactions carried on by them in their corporate capacity. He is the Registrar of their proceedings.

The permanent habit of having a Vestry Clerk does not exist in every Parish. Many rural Parishes are without one. This is to be regretted. One of the Churchwardens sometimes enters the Minutes of Vestry. Sometimes even the Minister does this. It is obvious, however, that no person occupying a place of discretion and responsibility in the Parish ought, in propriety, to be in the position of being master of the Minutes of the Parish,—which will naturally refer often to acts or conduct of his own.

In old Minute Books of Parishes, the entry is often found:—"Paid A. B. for keeping the Books and accounts of the Parish for the past year;" or "for making a fair copy hereof;" or "for keeping and writing this account." It is curious, indeed, to find that very much more care was formerly taken, in very many places, as to making and keeping full and fair entries of the proceedings and accounts of the Vestry, than is found at the present day.

The appointment of the Vestry Clerk rests entirely with the Vestry. Strictly speaking, the appointment is only for each occasion. Practically, however, Vestry Clerks are, like Churchwardens and other parish officers, usually appointed for the year. But they may be removed at any time, notwithstanding such appointment, just as it has been shown that Churchwardens and other Parish Officers may. The office "depends altogether on the will of the inhabitants, who may elect a different

clerk at each vestry.”* It follows from the very nature of his office that the Vestry Clerk is not the keeper of the Books and papers of the Parish; nor has he any right to hold them, unless by express Vote of Vestry.†

The Salary of the Vestry Clerk depends, of course, on the pleasure of the Vestry.

The duties of the Vestry Clerk are such as the Vestry shall appoint. The proper course for any Parish to pursue, in order to ensure regularity and avoid confusion, is, at the time of the appointment of the Vestry Clerk, to specify his duties. And it is particularly desirable, since the New Poor Law Act, and while the intermeddling provisions of that Act as to officers and servants remain unrepealed, not to let the Vestry Clerk hold the office of Assistant Overseer, as was formerly very much the custom, nor any other office connected, in any way, with the administration of the Laws for the relief of the Poor; and which will, therefore, enable the Poor Law Board to interfere, in any way, with his action and duties in relation to the Parish. The New Poor Law Act does not in the slightest degree affect the office of Vestry Clerk itself, as has improperly been imagined in many Parishes. The thing to avoid is, mixing up, in one person, this office with one having any relation to Poor Law affairs. The Poor Law Board can neither appoint nor remove a Vestry Clerk.‡

It may be safely stated that it will usually be the wisest course not to appoint a person of the legal profession to the office of Vestry Clerk. It is quite unnecessary to the discharge of any of his duties that he should be of that profession; while his being so has a tendency to encourage a narrow technical mode of dealing with the duties of the Parish, and very often indeed leads to litigation for which there was no real occasion whatever. It is far better for men dealing with their own affairs, in a Parish Vestry, to deal with them guided by a broad spirit of common sense and mutual kindness and fair dealing, than to be taught to shirk intelligent action and responsibility,

* Chief Justice Kenyon, 5 Term Reports, 714. Proof of his *acting* is enough. The appointment need not be proved. See *McGahey v. Alston*, 2 M. & W. 206; and before, pp. 100, 153.

† See after, Chap. VII. Sec. 12.

‡ The rule laid down correctly in *R. v. Poor Law Commissioners*, before, p. 162, applies with even greater force, if possible, to the case of Vestry Clerks than to that of Collectors and Assistant Overseers.

by appealing at every turn to one whom it is convenient to the indolent to fall back upon as the "legal adviser of the Parish." The disposition to have a member of the legal profession for Vestry Clerk, is but one phase of the modern tendency servilely to bow before the functionary system. Every Parish should, however, take care to have some known and confidential professional man of the neighbourhood, to whom it always refers on occasions needing professional action or advice.

The best way to give a view of the usual duties of the Vestry Clerk, will be to refer to the records themselves of well-conducted Parishes. The following illustrations of this point are taken from the original minutes of an active rural parish; and afford an exceedingly good practical example of the functions of the office.

In 1751 T. V. is appointed, at a fixed salary; "for which he is to execute the office of Vestry Clerk; find and provide fit and convenient books for the churchwardens and overseers of the Poor; and make them fit and proper to collect the respective rates; and to settle the accounts." In 1788 the duties of Assistant Overseer, called "Deputy Overseer" in the Minutes of Vestry, are joined to those of Vestry Clerk. It is worthy of notice that this is long before the earliest Statute relating to Assistant Overseers; and thus affords an incidental illustration of what has already been often stated, that the appointment of this or any other officer thought desirable by the Parish, is a matter which the Common Law recognizes as being entirely in the discretion of the Vestry.

In the same Minute Books there appears, in 1791, the order, —in reference to the duty of "settling the accounts," already mentioned as one of the duties of the Vestry Clerk,— "that, in future, the Vestry Clerk do call upon all Officers for their accounts, and vouchers for their disbursements; and that he do carefully examine the same, and enter them in a book preparatory to a Vestry being called for auditing such accounts." And the doing of the same thing, in reference to requiring the regular delivery, and the entering in a Book, of the accounts of the Trustees of the various Parish Properties and Charities, is another often mentioned duty of the Vestry Clerk; as is also the making out and correcting, from time to time, of tables of benefactions.

The same minutes show that, on one occasion, on a change

of Vestry Clerk, the Vestry very properly appointed a Committee to investigate the duties and emoluments of the office. This Committee prepared the following, as a specification of the duties that were required to be discharged by such an officer. This was reported and confirmed in 1822, and again in 1824; and still forms the basis of the functions of the office. It contains the most exact and careful specification of the duties of Vestry Clerk that is probably to be anywhere found.

“The Duty to be performed by the Vestry Clerk.

- (1) “To attend on [Highway] Composition days.
 “Make the books for ditto [Highway Rate Books], and notices.
 “To summon defaulters.
 “And all Business relating thereto.
- (2) “To make books for Church and Poor rates.
 “To summon defaulters.
 “And all business relating thereto.
- (3) “To attend the Court Leet; and all business relating thereto.
- (4) “To attend all special sessions; and all business relative thereto.
- (5) “To make list of Officers to be returned to the Magistrates, and other places; and notices to the parties.
- (6) “Notices of Vestries, and copies; and answering all letters.
- (7) “Attending Magistrates to get rates confirmed; and notices.
- (8) “Taking the examination of paupers; and making out all orders of removal; and advising with the officers on all business.
- (9) “To attend Vestries, and all parish meetings, including all Committees.
- (10) “And all business of every description whatever, except that relative to apprentices, appeals, lawsuits, and [except] disbursements.”

Statute duty and composition days are at an end, since the

Highway Act of 5 & 6 Wm. IV. c. 50. But the duties laid down under the first division of the above document, apply equally to what becomes requisite to be done, and to the books needing to be made, under the Highway Act.

The making out the lists of voters for the Overseers, under the Reform Act, has since been added : and will always conveniently form a part of the duties of the Vestry Clerk.* So also will the making out of Jury lists. But, in each case, the actual responsibility of the Overseers themselves, in respect to these lists, must not be evaded.†

An extraordinary and most unconstitutional attempt has been made by the Poor Law Board, in a late Act, to engross the entire control of the office, functions, appointment, salary, and responsibility of the Vestry Clerk. The instance affords a striking illustration of the constant and inseparable tendency of every step in the direction of Bureaucracy, to lead to gradually further and further grasping encroachments upon Free Institutions ; and to help the engrossment, by functionaries, of wider and wider powers, by means of those which they have already gotten. Thus are constitutional principle and independence most effectually by degrees killed out.

The object of the Act alluded to,‡ like that of all measures of the Poor Law Board, is to curtail yet more the powers and independence of the Vestry over its own action and officers,—even in matters totally unconnected with Poor Law management. There is no sort of reason or pretext for any interference meddling whatever by the Poor Law Board, in any of the matters named in the Act in question.

The Act begins with untrue recitals as to vestry meetings (recitals which are indeed directly in the teeth of the spirit and declarations of numerous Acts and Records of Edward VI., and the fathers of the English Reformation).§ It proceeds to give the control over the building of Vestry Halls to the Poor Law Board ; and then goes on to deal with vestry clerks. The vestry clerk thus contemplated, be it observed, does not exist for purposes connected, in any way, with the administration of the Poor Law. He is the officer of the Parish for general purposes—which began long before, and which will exist long after, a

* See before, pp. 156, 157.

‡ 13 & 14 Vict. c. 57.

† See before, p. 157.

§ See before, pp. 54, 95, 96.

Poor Law Board had or will have an existence. Yet, by this Act, wherever it is adopted,* the choice itself of a vestry clerk can only take place by order of the Poor Law Board; the Poor Law Board is to have the control over, and direction of, what duties he shall perform; by the consent of the Poor Law Board only can he be removed; and his salary is to be fixed and altered at pleasure by the Poor Law Board (though paid, of course, by the parish)!† It is certainly hardly credible that, in an age that calls itself progressive and enlightened, and with Governments and a Parliament of which the members are continually *professing* a nervous regard for the rights and moral and intellectual elevation of the people, an Act should have been able to be got passed, so contrary to every principle of common sense and common right and constitutional practice. It is still more incredible that such an Act should have been deliberately *adopted* by any parish in England. It is certain that it can have been nowhere adopted, in any fair open meeting of Englishmen, except on careful misrepresentation or unwitting misapprehension. Unfortunately, either of these is easily possible in bodies not trained to the practice of habitual discussion and deliberation;—a training which the English constitutional system carefully provides for; but which has been reduced almost to a nullity by the elaborate checks imposed, of late years, upon the true and healthy action of our Institutions of Local Self-Government.

Wherever the matter is rightly understood, self-respect, and regard for our free Institutions, cannot but lead to the assurance that the response of every parish in England, to the proposal for the adoption of this Act, will echo that given by a Committee of the Parish of Hornsey (Middlesex); which, in a report to the Vestry, presented, received, and acted upon, on Easter Tuesday, 1853, speaks thus manfully and with becoming spirit:—"With reference to a suggestion which has been made, that the Vestry Clerks Act (13 & 14 Vict. c. 57) shall be introduced into this parish, your Committee would fail in the discharge of their duty if they did not express an emphatic opinion. The object and effect of that Act are, in contravention of the uniform usage hitherto, to take the entire control of the duties, salary, and tenure of office, of Vestry Clerks, out of the hands

* See before, p. 54, *note* †.

† See before, p. 202, *note* †.

of Vestries, in the parishes where the Act is adopted, and to put all these into the hands of an irresponsible centralized Board. Your Committee trust that the Vestry of this parish will never so far depart from that independence and public spirit which have characterized the course of their predecessors, nor so far forget all that is due in self-respect to themselves, and in regard to the welfare of those who shall follow them, as to do other than resist to the uttermost, should its introduction ever be attempted in Hornsey, the application of such an Act. The office and functions of Vestry Clerk can be useful and honourable only so long as that officer is, and feels himself to be, responsible in all respects to the Vestry who appoint him, and to no other body or authority whatever."

SECTION XV.

THE DUTY AND RESPONSIBILITY OF EVERY MAN IN REGARD
TO HIS PARISH.

MEN oftentimes seem to think that all the relation they have to the Parish where they dwell, consists in paying certain rates when called for; and even this is done grudgingly. There can be no greater nor more deplorable mistake. The prevalence of such a notion is the result, and one of the most alarming symptoms, of the successful attempts that have, of late years, been made,—under cover, at the best, of a pedantic doctrinairism,—to overlay the free Institutions of England, their working and their spirit alike, by the system of Bureaucracy and Functionarism. It was many years ago remarked, even by the Duke of Wellington, that, “While every one is accustomed to rely upon the Government, upon a sort of commutation for what they pay to it, *personal energy goes to sleep*, and the end is lost. This supineness and apathy as to public exertion *will, in the end, ruin us.*”*

The payment of rates, this *commutation*, is the least part of the duty that every man owes to the State, and to his own neighbourhood as an integral part of the State. Again and again, in these pages, has it been shown that the *mutual responsibility* of the men of every neighbourhood, forms the basis of the free Institutions of England. And if free Institutions are, anywhere and ever, to be a reality, and not a mere name, the sense of that mutual responsibility must be continually and habitually present, as a practical part of every man’s life. Every man ought to feel that, while he enjoys the benefit of the free institutions of the country, there is a duty continually owing from himself to those Institutions, which is to be discharged by his doing his own part towards their maintenance and right action. The fulfilment of this duty ought to be felt by every man to be as much and as imperative an obligation as any claim

* Phipps’ Life of Plumer Ward. See before, pp. 5–8, and *note*.

that life can have. It should, indeed, have the claim of pre-
 dence over any call of individual business or occupation:—for
 the very opportunity of individual occupation, unfettered, de-
 pends on the right fulfilment of all public duties. This right
 sense of duty has it as its necessary consequence, that an active
 interest is always felt and taken by every man in the welfare of
 his neighbourhood; and that the intelligence of all is thus
 directed to the matters that affect the common welfare of all.
 Hence these matters become systematically well cared for.

It is the art and trick of those who would extend and make
 permanent the system of Functionarism, to appeal to the self-
 ishness of men. It is craftily insinuated how much time is ab-
 sorbed by paying attention to Parish affairs.* It is insinuated
 that only the low and the interested mix in such affairs. This
 is simply done that the indolence of self-seeking functionarism
 may gain its ends, by adding to the bribe of selfishness the bait
 of vanity.† By the use of such means, there is no doubt that
 the desired end has been accomplished, to a very great extent,
 in England, of withdrawing many from giving attention to such
 matters. Very different indeed was the spirit in England
 when Sir Edward Dering, standing in his place in the House
 of Commons, protested against the New Canons, *because*, said
 he, “I may be a Churchwarden.”

If the object of life were so low and grovelling that the mere
 amassing of wealth, and mere material gratification, were ad-
 mitted to be its great ends—which are, indeed, what is sought
 by Bureaucrats, to be made the sole spirit and thought of our
 time,—it is but a short-sighted policy that can yield to the
 serpent voice that would beguile from attention to common
 duties, and would engross all thought on immediate personal
 aims. Neither fortune, property, nor trade can ever be safe,
 nor the pursuits of commerce sure, except where law is certain,
 and free institutions secure the rights and liberties of all men
 from wanton aggression.‡ Wanton aggression comes in many
 forms. When Parliament once abdicates its functions,§ and
 Government functionaries and irresponsible Boards get the

* See ‘Local Self-Government,’ pp. 41, 42; and special attention is called
 to the whole of chap. xii. in the same work.

† Before, pp. 5–8 *note*.

‡ See hereon, fully, in my ‘Practical Proceedings for the Removal of
 Nuisances,’ etc., 2 ed., pp. 15–19, and p. 118.

§ See before, pp. 148, 169.

power, under any specious pretexts, of making arbitrary Rules and orders, it is found, when too late, that a specious cover of empirical legality has been allowed to be got to that which, without appeal or redress, has deprived a man or a neighbourhood of rights and opportunities which always involve, more or less, the enjoyment of property and the means of honest industry. Had that man and that neighbourhood, instead of being engrossed in selfishness, given time and thought to their real duties, no excuse could have been raised for the interference; no opportunity could have been got for smuggling through Parliament the measures which give powers so unconstitutional and so fearfully dangerous. Sooner or later, while the selfishness of individuals seeks to justify itself by sneering at Parish Vestries, and is blindly assiduous in its own aggrandisement, the pinch is suddenly felt, and deservedly felt, by those who have thus superciliously neglected their duties. Too late it is always found that even true self-interest will be best served by its being never forgotten, that every man has relations, and ought to have constant sympathies, with the neighbourhood in which he dwells.*

* The following observations are most just, and merit the well-considered attention of every lover of free institutions. "It is very evident that esteem for constitutional learning, and respect for ancient forms and usages, is very much diminished. . . . The consequence is very grievous. The forms of Parliament and of the Constitution oppose, in themselves, a great barrier to the strides of arbitrary power. The violation of those forms ought to serve as a signal that an enemy is in sight; and the people should be prepared at once to take part against a measure appearing under such inauspicious colours. This feeling, however, being now weakened, *it is in the power of a Minister to dispense with precedent and usage, whenever they stand in the way of convenience and expediency*; and thus all the *guards and outworks of freedom, on which her security so much depends*, are yielded without a blow."—Lord J. Russell, 'Essay on the English Constitution,' 284, 285. Unhappily, though Lord John Russell could write so well, when not in office, there is no Minister who, more than himself and those with whom he is connected, has pursued the course which he so much denounces. Another writer has well remarked, in immediate connection with Parish government :—"It is too much the fashion of the present day, for men to cry out for *alteration and reform*, as soon as ever they discover imperfection in the laws of their country, or, *in their application*. The right mode of proceeding is, first, to endeavour to *understand* the laws as they at present exist, in their bearings, extent, and tendency; and to study *the best methods of executing them*. By taking this course, men would act more like rational creatures than those now do who ignorantly raise clamours for alterations, of the tendency and probable effects of which, these rash reformers are, usually, altogether incompetent to

If what the Institutions of England have always required, and what Christianity no less enjoins, were done by each man, as regards these public duties of mutual responsibility, the actual burthen on each would be inappreciably light; while there would be the consciousness, in each, of right done and duty fulfilled, and the high and ennobling sense of each one habitually feeling himself to be an actual part and parcel of the State, in that which constitutes its real life, its only strength. Thus there could be no such thing as "low" or "interested" Parish authorities;—though this charge itself is now, with rare exceptions, a scandalous and unjustifiable libel, begotten of the jealousy of conscious self-remissness, or of sordid selfishness. When every man is known to his neighbourhood, by taking his due part in its affairs, the best men will be chosen to fill every responsible position; or, if not always chosen, will be known and felt, by those who are chosen, to have their eyes upon their conduct; and thus all jobbery and improper action will be effectually prevented. To leave all to Functionarism, is deliberately to nurse and cherish jobbery and corruption in their most insidious shapes; to beget and foster social treachery and demoralization in their worst forms.* The man who, in his selfishness, thinks his private concerns too important and engrossing for him to give up time, or take trouble, in the affairs of his neighbourhood, is, in fact, deliberately offering an opportunity and a bribe, irresistible and sure, to those who are but watching their opportunity to spoil him, in common with his neighbours, of all guarantees for the security of his property, for the safety of his pursuits of enterprise, and for even his personal liberties.

It ought to be matter of honourable pride and gratulation to any man,—it must always be so to every man of intelli-

judge. . . . The true patriot is, first of all, desirous to ascertain what those duties are which his country demands of himself, and how he may best perform them."—Roberson on Parish Business (1818), pp. 38, 69.

* It was once admirably said in my presence by a working man:—"That man is a *coward* who will let anybody else do for him, what he can do for himself." The spirit of this sentence involves the whole difference between Local Self-Government and Bureaucracy; between Freedom and Despotism. Men who will submit to let others be set over them, by any external authority or Board, to do or dictate *for* them what their fathers have done by their own energies, prove themselves to be cowards, and, at the same time, that they are wholly wanting in the self-respect which characterizes freemen.

gence and manliness,—when he is called upon to take any active part in the public affairs of his neighbourhood, and in the working of the Institutions of his country. Yet our time is disgraced, and the public journals are often disfigured, by men base-souled enough to complain, and evidently thinking it rather a fine thing to complain, of being called upon to serve even as Jurymen. They would rather that other men's lives and properties should be dealt with arbitrarily and summarily, by irresponsible functionaries, than quit, for a moment, their own selfish hungry pursuits of mere money-getting or ease, to take their share in the action of institutions by which right and justice are administered to the people by the people themselves; —themselves responsible to each for the mode of that administration. When Esau sold his birthright for a mess of pottage, it was an act of far less folly and narrow-sighted immediate selfishness, than that of those who thus complain of, as a grievance, and would shirk, the results of a position and responsibility, the existence and action of which have alone constituted England a free nation, and Englishmen freemen.*

It is, unhappily, too necessary to dwell thus upon this topic. While heartless conventionalism and hollow humanitarianism, disguised under numberless shapes of sounding sentimentalism and cant formulas, have spread and are spreading, the spirit of Christianity and the spirit of free institutions, which are identical things, have become forgotten. The selfish system has already spread itself too far and too deep in England; and those interested are ceaselessly striving to ensure its further spread. The consequences have already, happily, shown themselves in some remarkable ways, which have awakened some attention. But the true causes are too often not seen; and there are too many who are interested and active in diverting attention from observation of and inquiry into those causes.

* See, on this aspect of the functions of every freeman, and on the essential distinction between the right and only sound system of administration of justice and the system of Summary Jurisdiction, some very striking passages in Lord Coke's 4th Inst. p. 39, and Lambard's *Eireuarcha*, p. 531. See also before, p. 174, *note*. It is not less discreditable than this attempt to evade jury duty, to find the public journals often filled with querulous complaints of the mode or inequality of *parochial taxation*. It is the duty of the complainants to be active themselves in Parish functions. Instead of this, they selfishly neglect their own duties, and then complain of those who are not guilty of the like neglect.

The Law of England has heretofore not only recognized, but, very rightly, *enforced*, the mutual responsibility of men in their neighbourhoods. This has been so from the earliest times. A few references will be useful in illustration of this.

Every man was formerly, and still legally is, bound to attend the Court Leet; there to help in administering justice between his neighbours.* It is greatly to the injury of the public welfare that the practice of holding these Courts has, in most places, fallen into disuse. This neglect is highly culpable on the part of those who are charged with the function, as Ministers of State, of advising the Crown as to its obligations in the administration of Justice. With what propriety can they remark, as they often delight to do, on the neglects of any man, when this single instance of remissness in the fulfilment of their first duty, proves their own neglect to be so great? The action of these Courts was, and would now be, an incalculably great and beneficial means of hindering moral and social wrong in an infinite variety of forms; of preventing litigation; and, still more, of preventing that now unobserved wrong-doing and encroachment on the rights of the Public and the weak, which are continually taking place *in consequence* of the knowledge of the difficulties always now attending legal resistance, and the unwillingness—usually absolute inability—to incur its hazards.

There exists in England, now, nothing else that takes the place—that fulfils *at all* the functions—of the Court Leet. It needs no Act of Parliament to restore the activity of this Court. It needs but for men to understand it. As a matter of form it is still held in most places; but its real character and functions are wholly lost sight of and unfulfilled. There are a few places, however, where, though not in its full efficiency, it still does represent something of its true and constitutional character.

A penalty was formerly, and rightly, imposed upon every man who did not attend the Court Leet of his Parish. Such a penalty is a fitting reminder of what every man owes to the action of free institutions.†

* See before, p. 23, *note* †.

† In a few places this penalty is still imposed. But, so true are the words of Lord J. Russell, already quoted, and so little is the spirit of this Institution understood, that respectable Journals have given admission to letters ignorantly complaining of such a penalty as a relic of serfdom!! (See, for instance, *Times* of 30th Oct., 1856.)

The Acts of Parliament which exempt certain persons from the liability they would otherwise have, to serve Parish Offices, sometimes afford, in the very mode of so doing, illustrations of the above general Principle. Thus, 6 & 7 Wm. and Mary, c. 4, gives apothecaries the power of excusing themselves from such service, on the ground that the necessary duties of attendance on the sick, will often be incompatible with the duties of such offices. Here it is put on the right ground:—Not the selfish interest, but the public advantage, is the ground. The recital of this Act expressly declares that, *without* such power of excusing themselves as that Act gives, they, in common with all men, “are compelled to serve several Parish, Ward, and Leet offices, in the places where they live, and are frequently summoned to serve on Juries and Inquests.” So, in 1 Wm. and Mary, c. 18, it is enacted that, if any Dissenter shall object to take on him “the office of High Constable, Petty Constable, Churchwarden, Overseer of the Poor, or any other Parochial or Ward office,” on account of the *oath* he has to take, he may execute the office by deputy; “*provided* always, the said Deputy be allowed and approved by such person and persons [that is, by the Vestry or Leet], in such manner as such officer or officers respectively should by Law have been [himself] allowed and approved.” This puts the responsibility of every man, and his liability to serve Parish offices, very strongly. For it shows that an Act of Parliament was thought necessary even to enable any man to serve a parish office by deputy; and that no such deputy will, even under that Act, be allowable, unless approved by those who made the first appointment.

The sense of the duty which every man owes to the public, as the point really involved, is further illustrated by some cases where a man who has fulfilled one duty, of a special nature, becomes thereby exempted from the necessity of fulfilling others of an ordinary nature. In this case, it is not, as is the modern system, that any one is for a moment admitted to have his selfishness gratified: but the sense of public duty is, as in the case of the apothecaries, still appealed to. The Act of 10 Wm. III. cap. 23, is an illustration. That Act declares that whoever has prosecuted a Felon to conviction, shall be entitled to a certificate, which shall discharge him from the obligation to serve “Parish and Ward offices *within*

the Parish or Ward wherein such felony” has been committed.*

Under the Act of 43 Eliz. c. 2, every householder, without exception, is liable to be appointed Overseer. Some exemptions have more lately been allowed. With one or two exceptions only, these exemptions are unjustifiable. They have led, and do habitually lead, to very great mischiefs, and to the growth of a sense of unfairness to those not exempted. No man, save in cases where other public welfare is concerned, should be exempted or excused from any part of his duties to the public. There is, however, no doubt that every person not coming within the range of such exemptions, is obliged to serve all parish offices;† and, moreover, that he is indictable‡ if he do not serve—as guilty, by such refusal, of a *crime against the State*, of which he proves himself an unworthy son,—as well as liable to any penalties which the Parish may, by Bye-Law, impose.

Many Acts of Parliament impose penalties upon whoever shall refuse or neglect to act. The Vestry itself can, however, and all rightly conducted ones do, by a bye-law of their own, affix penalties to the neglect or refusal by any person to take on him the discharge of any office to which he may have been chosen. These penalties do not, it must be observed, even if paid, lessen the fact of the *crime against the State*, nor, therefore, the liability to indictment for neglect to take office. And every parish that does its duty, will take care that the selfish contemners of the Institutions of their country, who do thus decline to fulfil their duty to their neighbours and the State, shall be both fined and indicted. The moral, social, and public brand of being a *criminal*, ought to be habitually fixed on every man who sets his own selfishness above his public duty, and his own ease above what is owing to his fellow-men and the State. This is the true position of every such man, alike by the Law of Christianity and the Law of England.

The Parish Constables Act declares every man, between twenty-five and fifty-five years old, to be liable to serve, with a

* This exemption has been repealed by 7 Geo. IV. c. 84. But it is not the less applicable in illustration of the Principle sought to be made clear.

† See before, p. 92.

‡ *R. v. Jones, Strange*, 1146; *R. v. Burder*, 4 Term Rep. 778; *R. v. Poynder*, 1 Barnewall & Cresswell, 178; *R. v. Hall, ib.* 123; *R. v. Moseley*, 3 A. & E. 489. The principle involved in these cases applies to *every Parish office*.

limited number of exceptions. It expressly adds, that any such person chosen, who shall not attend and be sworn as constable, shall be subject to a penalty of ten pounds; and any person who, having been sworn, shall refuse or neglect to act, shall be subject to a penalty of five pounds.* The Juries Act declares every man between twenty-one and sixty years of age liable to serve,—with, as before, a limited number of exceptions. And if any jurymen fail to attend, after summons, or fail to fulfil his duties, he is, by the same Act, made liable to such fine, by way of penalty, as the Court shall think fit.† The Highway Act declares every person, with, again, a limited number of exceptions, liable to serve the office of Surveyor, under a penalty of twenty pounds.‡ This includes the office whether vested in a single person or in a Highway Board.

How unequivocally the Law has recognized the duty of every man to fulfil that mutual responsibility which each owes to the State and his neighbourhood, will thus be clear. And it will be no less clear that the Law has provided for the enforcement of this noblest obligation of freemen. But it is of the highest importance that men should be led to the discharge of these obligations, not through threat of the enforcement of pains and penalties, but by a true knowledge and sense of what the grounds and essence of such obligations consist in. Those grounds and essence have been already explained. Let them be understood, and no man will complain of it as a hardship that he is called on to fulfil such duties. Every man will, on the contrary, prize, as his most valuable birthright, the great prerogative which distinguishes the freeman from the subject of despotism; namely,—the function of self-government,—of managing his own affairs,—of taking an immediate and independent part in the consideration of, discussion on, and carrying out, what concerns the interests and welfare of his neighbourhood. Thus, far more directly and importantly than by any paraded mere political franchises, will every man really feel himself to be a part and member, and to contribute to the welfare, of the State.

Did the most important of all “common things” really form a part of the education of those who call themselves the edu-

* 5 & 6 Vict. c. 109, s. 13.

† 6 Geo. IV. c. 50, s. 38.

‡ 5 & 6 Wm. IV. c. 50, ss. 7, 8.

cated classes in England, the knowledge thus alluded to would form the fundamental part in the education and practical habit of every man. As it is, this branch of knowledge is utterly neglected by all teachers.*

Before quitting this subject, some notice must be taken of one or two points on which prejudices or errors sometimes exist, certainly to the injury of the public welfare, even where there is every intention of fulfilling local duties.

It is common to take as a guide, in the choice of parish officers, the principle of rotation ; that is, that a man shall be called upon to serve an office according to the length of time he has been a Householder. This may be a fair enough sort of guide to take, in small parishes. But the idea of its being any real test, or in the slightest degree obligatory, is merely absurd. The principle of rotation is thus far, and no farther, sound and sustainable :—that no man can be called upon to serve in the same office, a *second time*, till all other fit men in the Parish have served. This is right. For, while every man is bound to fulfil his part, no man is bound to fulfil more than his part. All must share and share alike.†

* No men have less practical knowledge on these subjects than Members of Parliament. Formerly, Members of Parliament were chosen from their tried knowledge and practice in local affairs. It is far otherwise now. He who is most ignorant, and therefore the loudest attacker of our institutions, has the best chance. It is this want of practical knowledge, that is the sole means by which the extraordinary sort of legislation which disfigures the Statute-book in our time, is able to be got passed.

† When, instead of the modern unconstitutional innovations of *Summary Jurisdiction*, the Law shall be restored to its true course, the burthen on each will be really far less than it now is. The best of all practical education—namely, the taking actual part in the working of Institutions—will be shared equally among all men, and be thus felt as a burthen by none. A Court of the free men will sit, daily, to despatch all smaller cases, both criminal and civil. There is one grown man to every five of the population. In a town of 25,000 inhabitants, there are thus 5000 who should, taken by lot, *no exemptions whatever allowed*, sit on these Courts. Say that these Courts consist of twelve each. The turn of each man would not come, for even *one day*, oftener than twice in three years. The less the population, the fewer the calls. The more the population, the greater the number of persons to take in rotation. *One day a year* would certainly be more than the average call on the time of each man. Thus simple and little burthen-some is the application of sound Principle instead of empirical nostrums. On the present innovatory and unconstitutional systems,—operating alike grievously hard on the poor, and unsatisfactory to all,—a tradesman is often called to serve as a jurymen for a week together ; and over and over again

The smaller parishes, having but a limited range of choice, will very naturally, but not necessarily, appoint to Parish Offices in rotation. Where the range of choice is larger, the choice must be of the *best men* out of the whole, be they whom they may. Upon whomsoever the choice falls, he is bound to serve. And those on whom the choice falls, will esteem that choice an honour, and not an onerous obligation, if they have any sense of what the essence and spirit of free institutions are.

Some people further indulge the extraordinary notion, that both the offices and the benefits of the parish should be confined to those who were born in the Parish. Nothing more ridiculous can be suggested. That a man was born in a place is certainly no merit; it is a mere accident. That he has remained all his life in the same parish, is evidence of nothing but the force of habit. He may be as good a citizen as any other; but he is certainly no better a one on that account. On the other hand, the fact of a man coming into a fresh Parish is, in itself, evidence of something not merely thus negative, but of something positive. It proves that he finds some special inducements attracting him to that Parish, and which necessarily, therefore, make its well-being a matter in which he has special interest. Such men, instead of being shunned, should be hailed with cordiality. Though they should not be hastily thrust into office, before they have had time to become familiar with the Parish, and with its sympathies and history and needs, they should be welcomed as co-operators in all its businesses; and, as soon as their aptness has shown itself, should have some of the responsibilities of office entrusted to them.*

It need hardly, it is hoped, be said, that it is not thus suggested that Parish Charities should be abused. If, as is often the case, funds are left for schools, or for apprentice fees, or the like, it would be very wrong to let the benefit of such schools

within a short period. This is monstrous. But it is the gross *abuse*, not the right application, of the constitutional Principle. It all helps the ends of the attackers of our Institutions, by disgusting men with the discharge of their duties. Let men understand the difference between the true Principle, rightly applied, and such perversions and abuses of it, and the first step is made towards the true remedy. Empirical remedies, and cant cries of *Law Reform*, will never do anything but help the growth of Functionarism.

* See before, pp. 63, 64.

or of such fees be engrossed by those who have merely made a temporary sojourn, on the speculation of the advantages to be thus got. By such means the foundations of schools, and other parish properties, are very often abused: the children of old inhabitants are deprived of their right, to favour some who have merely come as temporary sojourners, in order to get the advantage, while taking no interest or part in the affairs of the neighbourhood. It is certainly the duty of the Parish, in regard to all funds and managements over which it has any control, to take care that Bye-Laws are passed, preventing the advantage of any such gifts or foundations being enjoyed by any whose parents have not resided a certain number of years within the Parish.

It has been often remarked in these pages, that the Officers of the Parish are responsible to the Parish, and to the Parish only. It is self-evident that, unless this be so, there is no real responsibility. No duty can be ever well discharged where the responsibility is uncertain or divided; nor will it be ever well discharged where the entire sense of responsibility is wanting.

The friends and supporters of a pedantic doctrinairism, have done their best towards undermining the spirit and the practice of the free institutions of England, by the introduction, here, of the Bureaucratic systems by which continental despotisms maintain their blighting and unholy influence over the liberties and the intelligence of men. The devices of this doctrinairism have, of late years, contrived to get the plan introduced, of making those who are, nominally, the Officers of certain local Bodies, to be not responsible to those Bodies, and to be incapable of being removed except at the pleasure of some Central Board or Functionary.* Such a dishonest plan needs no comment. It suits, well enough, the purposes of those the only end of whose existence is the maintenance and increase of Functionarism;—and who are unable to exist and maintain themselves against the honest working of Free Institutions, except by means of social treachery and secret espionage.†

* See, as examples, before, pp. 173, 174, 177, 188, 209.

† A remarkable instance occurred in the spring of 1854, in which it was proved that the officers under the control of the Poor Law Board, in one of the largest cities in England, had been long exercising a course of systematic and *instructed* espionage over an independent constitutional Public Officer of

Every practical man must be thoroughly aware that any such system is absolutely inconsistent with the faithful, efficient, or honest discharge of the duties of any office.

It is clear that any Body which has not all powers of appointment, salary, direction, and dismissal over its own servants, can have no independence or permanently useful action. The servant will be above his masters: he can set them at defiance. He can put his own caprices, disguised under the sycophantic cloak of regard for the wishes of those who alone can displace him, against the careful instructions of his nominal masters. Thus a stop will be put to all useful work:—of which too many and lamentable instances have already occurred.

Not a shadow of real argument can be given for making either the appointment, salary, or dismissal of any officer, or the instructions he is to follow, dependent, in any way, on a Central Board. In this, as in every other case, the actual conditions and merits can only be known to those immediately concerned. Social treachery, hypocrisy, and selfish sycophancy, are, and can be, the only results of such a system.

What mercantile establishment could be successfully conducted, if every clerk did not know that his retention of office depends entirely on the fulfilment by him of his duties to, and the instructions of, his immediate masters? Responsibility and authority go together: for either to be real, both must be always undivided.*

Happily, the Officers of the Parish are at present, with the exception of Overseers,† free from this interference. But every insidious attempt is being continually made to bring others of these officers under it. This may be said to have been done where any parish has submitted to the ecclesiastical encroachment of having the office of one of its Churchwardens, or of its Sexton or Parish Clerk, abused into being made the mere donative of the Minister. But, as this has no real countenance of Law, it ought not to be thus considered. It has been seen, however, how the New Poor Law system takes away all the original authority of the Overseers, and hands this over to

the highest importance, who, in the discharge of his functions as Coroner, had pursued the straight course of his duties; and had, therefore, made himself displeasing to the tribe of functionaries. Such instances are, in fact, continually occurring. They are the natural and necessary result of the system.

* See before, p. 202, *note* †.

† See before, pp. 153, 154.

Boards of Guardians, who are themselves without independence, and without any control over their own servants.* It has been also seen what dishonest and insidious *attempts* have been made in the same direction, with respect to Collectors and Vestry Clerks.† It is clear, therefore, that it behoves all those who respect and would maintain the Institutions of England in their sound and wholesome action, and who value intelligence, independence, and integrity, not only conscientiously to fulfil their own active duties in the Parish where they dwell, but to keep a careful watch over all such attempts as have been last named; and to leave no effort unused to procure the repeal of the unconstitutional powers that have already been gotten, by those who prove that not truth but self-interest is their aim, when they seek to enforce their theories by means, not of argument and constitutional machinery, but by bribing men to forget the duties they owe to their own neighbourhoods and the State, that thus the course may be clear for the arbitrary and enforced orders, and the capricious exercise of the “brief authority,” of irresponsible Functionaries and Government Boards.‡

* See before, pp. 168, 169, 173, 174.

† See before, p. 180, 208.

‡ While these sheets are passing through the press, a remarkable document has been issued by the French Minister of the Interior (M. Billault), addressed (under date of 20th Nov. 1856), to all the *Préfets* in France. In the country whose system of centralization has been taken as the model servilely adopted in England during the last twenty-five years, so much discontent and mischief have grown up from that system, that the head of the Home department has been obliged, at length, to administer a most severe rebuke to all the chief functionaries of his department. The document expresses such universally true and statesmanlike ideas, that it cannot but be hoped that M. Billault may yet have the opportunity of doing something in a more lasting manner, to free his country from the incubus of that system the exhibition of one of whose results has called forth this rebuke. The whole document is too long to quote. The following are some of the most striking passages. They are of universal application; and nowhere need to be more well considered than in England, under the vicious and mischievous system that is daily exhibiting its characteristics and results among us.

“The Administration too often thinks fit to interfere in these local differences, and improperly brings its authority to bear upon the conflicts which grow out of them. If these assemblies give a bad or unintelligent solution to the affairs brought before them, the population will know to whom the responsibility is to be imputed. A bad local decision is less mischievous than a system which tends to impose universally the action of central authority in matters not involving any general interest to require its interference. Administrators allow themselves too easily to be led away by the desire of crushing all inconvenient resistance,

instead of using their personal influence, and encouraging that public opinion which, in the long run, is never blind to its own true interests."

The points thus specially stated in this document are those which involve the whole matter. They are precisely the points to which I have, for several years, been calling attention. In 'Local Self-Government' (chap. iv. p. 73) I remarked:—"While, and inasmuch as, there will of necessity exist, in every country, certain groupings of men having certain common interests,—whether those groupings be within the circuit of a town, a village, or a shire,—there will also always be certain interests beyond those local ones; interests *general and national*. Each local group can alone manage its *own special affairs* properly, and cannot submit to be controlled or interfered with as to these by any general representative body. Still less, though upon exactly the same principles, can the General Representative Institution interfere in any affairs of individuals. It is the Associated Bodies, and as associated bodies, that are represented in the General Assembly; not the individual citizens. It is the affairs of the whole, as a congeries of groups, that the general assembly administers. It has nothing to do with individual affairs, or *special local affairs*, unless as in some way mixed up with general interests." (See the same work, *passim*; and 'Government by Commissions,' pp. 372, 373.) It is well worthy of notice that many English Journals, which have heretofore supported the bureaucratic measures that have characterized English un-statesmanship for the last quarter of a century, seem to have had a new light dawn upon them from the document thus issued by M. Billault. The *Times* itself, which has so ably and valuably exposed *red-tapism* in some departments, has, notwithstanding, heretofore been the great supporter of the functionary system, and the stay of bureaucracy and doctrinairism in England. It even advocated that most dangerous and nefarious of the forms in which bureaucracy can show itself, the centralized Police scheme. Yet even the *Times*, taking M. Billault's circular as its text, displayed its usual ability in an approving article, with which it may be hoped that its own future practical course and advocacy of measures may be found consistent; and on which the only point of remark need now be, that the common but very grave error is fallen into by the writer of treating Parliament as the *source*, instead of as a *result*, of Institutions of Local Self-Government. (See before, p. 10.) The article referred to is so directly to the point of the immediately foregoing pages, and of the whole of the present work, that I feel it due to record the main part of it here, that it may remain a permanent testimony, from an important leader of Public Opinion, to the soundness of those principles which I have so long contended for, and which it is the object of this Volume to exhibit in their practical applications, and to aid in their practical working.

"A bad decision, he [M. Billault] remarks, on a local matter, is infinitely less injurious than the meddling of the central authority in matters not of general interest.

"These admonitions spring from a wise and true appreciation of the real nature of municipal government, and are worthy of all possible commendation. The true principle of a municipality, or inferior and local government, undoubtedly is, to define it strictly within its legal limits, and within those limits to leave it the freest and most unfettered discretion. If people are incapable of thinking and acting for themselves, the wisest way would be to abolish municipalities altogether, and not mock them by an authority which

they are incompetent to exercise. But, if once we resolve to give the people the power of managing their own affairs, we ought to make up our minds to give them, together with that power, all the conditions essential to its successful execution. Now, one of those conditions undoubtedly is, that if they do well, their constituents will profit; if they do ill, their constituents will suffer; that, in fact, the municipality should act with the freest liberty and the fullest responsibility. This can never be said to be the case, so long as they have suspended over their heads the interference of some higher tribunal, which can cut short their labours, or even annihilate their existence. To people who deliberate on municipal matters, as well as to those occupied by higher concerns, it is absolutely necessary that there should be a feeling of responsibility, to keep alive diligence and enforce the exercise of criticism and inquiry. This feeling can hardly exist among men whose every step is liable to be reviewed, and whose very existence hangs on the will of a superior. This truth has already been revealed to Imperial France, and *ought not to remain hidden from monarchical England*. In our anxiety to do everything well, we are *too apt to give to our central offices powers utterly inconsistent with the efficiency of those local bodies over which they are exercised*. Thus we have a Poor Law Board and a Home-office; the one framed for the purpose of preventing people from spending too much of their own money in the relief of the distressed; the other to save them the trouble of thinking for themselves on almost all matters of social organization. Now, *we entirely deny the wisdom of these arrangements*, on exactly the same ground as that relied on by the French Minister of the Interior—namely, that the whole duty of the central Government is to keep those bodies within their jurisdiction; and, within that jurisdiction, to leave them as free as possible to work out their own way. We are most willing in this respect to learn from our neighbours, but cannot help observing that when we come to compare local with central government neither nation seems to reason logically from its own principles. The French Government is full of the most generous confidence towards its own subjects on their local affairs, and proscribes any interference with them except on a question of jurisdiction. But when we come to matters of general government, the French Administration confides to the people nothing but the election of a supreme ruler, and of a Legislature with whose return it openly and avowedly interferes by every method in its power. Confidence is gone, and is replaced by the most complete distrust and the most ungenerous fear. The English Government, on the other hand, has the fullest confidence in the power of the people to exercise control over their own public affairs. But when we come to local matters, this confidence is entirely gone, and *its place supplied by the most meddling and mischievous interference*. Each party concedes too much or too little. Each party fails to draw the true inference either from its concessions or its repressions. Either those who are trusted with local power should have general power also, or those, like ourselves, allowed to determine the destiny of a nation, should be deemed equal to regulating the affairs of a Parish.” (*Times*, 15th Dec., 1856.)—See before, pp. 46, 181, 219.

CHAPTER IV.

PARISH COMMITTEES.

1. COMMITTEE OF JURATS FOR SETTLING DIFFERENCES.—2. COMMITTEE OF “ASSISTANCE.”—3. SYNODSMEN.—4. COMMITTEE FOR WATCH AND WARD.—5. COMMITTEE FOR ASSESSMENT.—6. COMMITTEE FOR RAISING AND DISTRIBUTING POOR RELIEF.—7. COMMITTEE FOR AUDIT.—8. COMMITTEE FOR DESTRUCTION OF VERMIN.—9. COMMITTEE FOR HOLDING LAND.—10. COMMITTEE FOR MANAGING POOR RELIEF.—11. SELECT VESTRY FOR POOR RELIEF.—12. SELECT VESTRY UNDER HOBHOUSE’S ACT, WITH THREE COMMITTEES.—13. LIGHTING INSPECTORS.—14. HIGHWAY BOARD.—15. BATHS AND WASHHOUSES COMMITTEE.—16. LIBRARY AND MUSEUM COMMITTEE.—17. BURIAL BOARD.—18. NUISANCES’ REMOVAL COMMITTEE.—PRACTICAL MEANS TO THE RIGHT ACTION OF ALL COMMITTEES.

THE appointment of Committees of any Body or Institution, chosen to give special attention to matters that concern the whole, is one of the most ancient, as well as one of the most striking and practical, of the characteristics of English Institutions.* The whole of our Jury system springs from this origin.† Our earliest records contain full illustrations of the practice. Domesday Book is particularly interesting in this respect. Magna Charta has conclusive evidence on the same point, when, among other illustrations of it, it declares, in one of its most important provisions, that, if “any matters cannot be taken on the [first] day of the shire-mote [county assizes—which all ought to attend], so many knights and freeholders shall stay, of those who have been there at that shire-mote, as shall be able to make all the judgments.”‡ By thus taking a select number in rotation, out of the whole body, the duty becomes divided and its burthen easily borne.§ This is, in short, one of the practical modes, on the efficient carrying out of which the right action of free Institutions materially depends.

* See before, p. 66.

† See ‘Local Self-Government and Centralization,’ chap. xviii. p. 259, etc.

‡ Cap. 19 of Magna Charta, Johannis. § See before, p. 220, *note*.

The Common Law completely recognizes the authority both of the appointment and action of such Committees. The statutory recognition of any such Committee is merely *declaratory*, not enabling.* Many statutes have indeed, from time to time, recognized such Committees, and suggested their general application, as the most efficient means of carrying out certain objects. Such statutes are thus useful.† But no such Committee derives its life and vigour from any such statute. It has become too much the habit, in our time, to forget a comprehensive and constitutional mode of regarding the provisions of such Statutes;‡ and to grope in servile feebleness, cramped within the limits of their fancied letter, instead of taking them, as they really are, merely as suggestive of what rests upon and must work through the Common Law; to be interpreted and applied in accordance with the spirit of the Common Law; and to have the deficiencies which will be found in the best prepared,§ supplied and filled up by reference to it.

The essence of the Committee system, lies in the erection of an efficient means for consideration, discussion, and action, concentrated in numbers not too great, and yet with the constant check of a conscious responsibility. Committees differ from Officers, in having the functions of the freest consideration, discussion, and determination, within the scope of the matters committed to them; while the duties of Officers are mainly ministerial and specific.

Though some illustrations of the Committee system, as applied to the Parish, and having a remote lineage, have already been given in these pages, this is the proper place to cite a remarkable authority, of three centuries ago, showing how systematic and regular was this Committee action at that time. Through Strype's Annals we learn, from one incidentally writing under date of 1564, that it was then well understood that "to every parish belongeth [among other persons and things] V. four or eight *Jurats* [sworn men] for offences given and taken; . . . VII. an *Assistance*,—being thirteen persons, to consist of such only as had before been churchwardens and constables; VIII. a *Vestry*, of the whole Parish,—being a

* See before, p. 60, *note* †, and p. 134.

† See before, p. 134.

‡ How the recognitions contained in such Statutes differ from offices freshly created by any Statute, see distinctly pointed out in quotations contained before, p. 122, *note*. And see p. 10.

§ See p. 135, *note*.

public assembly of all, young and old.”* This passage is very noteworthy. We find two Committees named in it; which mention is made the more striking by the fact of the same document naming the Vestry also.

1. *Committee of Jurats for settling Differences.*

The *first* of these Committees, was a specific number chosen, whose office seems to have been, to endeavour to heal differences among their fellow-parishioners, by a sort of equitable jurisdiction over “offences given and taken;” a most wise and beneficial practice; and one which was well able to give efficiency to its efforts at a time when the Court Leet was in full action. He who refused to make right accord with his neighbour at the suggestion of the Jurats, would be forthwith presented to this court of criminal jurisdiction; and thus that which he refused to the Committee would be enforced by the Leet Jury.

2. *Committee of Assistance.*

The *second* was a Committee composed of what are commonly called “passed officers;” men supposed thus to have valuable experience, and whose function it was to confer and advise with the officers for the time being, as to the mode of executing their duties. This committee of “Assistance” still exists in many Parishes.† There is no doubt that it is the origin of most of the illegal “Select Vestries” which will be presently noticed;—the latter being cases where the Committee of Assistance usurped an authority which never belonged to it, and managed to override the Vestry; to aiding whose chosen officers its right function was always confined, by rendering that “assistance” which the experience of its members would ordinarily well and usefully enable it to give.

3. *Synodsmen.*

The origin and nature of the *synodsmen* or *sidesmen* have been already explained.‡

* Strype's Annals, vol. i. p. 463.

† The term “Court of Assistants” is also adopted as the designation of the governing Body of many ancient incorporated companies.

‡ Before, pp. 70, 71. Notwithstanding the encroachment thus made by

4. *Committee for Watch and Ward.*

In the first Chapter, "the provost and four" were several times named, as those through whom, on behalf of the whole parish, many things of great importance to the welfare of the whole parish were done. The "provost" is merely one inclusive name for what occurs under the various denominations of *tythingman*, *head-borough*, *bors-holder*, *chief-pledge*, *constable*, *boro-reeve*, etc.—names all meaning the same thing. Lambard remarks ;—" Now whereas every of these tithings or boroughs did use *to make choice* of one man amongst themselves, to speak, and to do, in the name of them all ; he was therefore in some places called the *Tythingman*, in other places the *Borough's-elder* (whom we now call *Bors-holder*), in other places the *Boro-head* or *Head-borough*, and in some other places the *Chief-pledge* ; which last name doth plainly expound the other three that are next before it ; for Head or Elder of the Boroughs, and Chief of the Pledges, be all one." And, as the inhabitants, the mutual pledges, chose their chief, by whatever of these names he be called, so, " Every of the pledges should yearly be presented and brought forth by their chief pledge, at a general assembly for that purpose." But, for the convenience of all, a special Committee, out of the whole, was chosen, year by year, for constant action.* The "provost† and four" were the Committee appointed to act, on behalf of the whole parish, in the various matters that the provost had in charge.‡

5. *Committee for Assessment.*

An important and interesting illustration of Parish Committees, is afforded by the 'Inquisitiones Nonarum,' to which ecclesiastical devices, many of the "reformed" clergy were very uneasy at the action of the synodsmen. This plainly appears from Strype's Annals, vol. i. p. 463.

* The term "Borough" (A.-S. *Borh*) means neither more nor less than "pledge ;" that is to say, a place where all the men dwell *in mutual pledge*. See before, pp. 123, 124 *note*. The Anglo-Saxon term for the "view of frank-pledge" is "*frith-borh*"—literally "peace-pledge." The term "*frith*" became, by a very natural blunder, corrupted into "free ;" and so (in the Norman French) the compound word was converted into *Frank-pledge*.

† *Prakfast*, or *profast*, are the older forms of the word. It is an ancient Anglo-Saxon word.

‡ See before, p. 121. See also Lambard's 'Constable,' pp. 7, 8.

reference has often been made in this volume. Like the last, it is an illustration of the habitual practice,—and not merely of what was done at one time or in one instance. In every parish, it seems, without exception, when the imperial taxation was to be assessed, a Committee made the inquiries and returns which were necessary, on all the important matters to which that ancient record, as one example, refers. Though the same actual thing was really done in every instance, the phraseology becomes, in some cases, very special. Thus, it is expressly stated in several instances, that the matter has been “committed” to certain persons whose names are recorded, to do what is needed, “for themselves and the rest of the same parish.”*

It will hereafter be shown, in treating of Parish Rates, that it is matter of much practical importance that a Committee for Assessment should be now always kept in standing action in every Parish.

6. *Committee for raising and distributing Poor Relief.*

When Overseers were first appointed, they in fact formed, with the Churchwardens, a committee of the Parish, for the special purpose of gathering and distributing the means of relief, and setting the poor to work.†

7. *Committee for Audit.*

And, before the time of “Overseers,” the “Collectors” were kept in check by another committee of “Auditors.”‡ The same thing, as to Auditors, has been already shown to be in common use at this day.§

8. *Committee for Destruction of Vermin.*

There used to be a standing committee in every Parish for the destruction of “noyfull fowles and vermyn.” The practice still exists in some rural parishes. But many readers may be sur-

* It is thus throughout the returns from Hertfordshire. And see throughout Huntingdon, Cambridgeshire, etc. The same actual thing, though not these words, is found in every shire.

† See the following chapter, for what was, in fact, another similar special Committee, on Apprentice funds, under 7 Jac. I. c. 3.

‡ See 27 Hen. VIII. c. 25, s. 14. Six or four were to be added to the Churchwardens to form this Audit Committee. See before, p. 184.

§ Before, p. 183.

prised to learn, that this object was formerly felt to be so important, that the practical use of it, already then existing in many parishes, received the express sanction of general suggestion by Statute. A committee, consisting of the churchwardens together with six other parishioners, is named, with power to tax and assess every person holding lands or tythes in any parish, yearly at Easter, and whenever else it may be needful, in order to raise a sum of money to be put in the hands of two other persons, who are to distribute it. And these distributors are to pay this money in rewards for the different sorts of vermin brought in. The record is curious and interesting enough, on its own account, to be rescued from forgetfulness, if only for its bearing on the natural history of the country. It shows itself to be so in a directly practical sense, when it is found that legislation has, very recently, been resorted to, for an analogous purpose, in one of our most important colonies.* This old-esta-

* The *Melbourne* (Australia) *Argus* informs us that "An Act against the growth of thistles received the Royal assent on the 19th of March [1856]. It is one the necessity of which must be obvious to every one acquainted with the colony; and, with a view to its effectual operation, it is of a very stringent character. It may seem at first sight that its provisions are too severe, but from its nature the Act requires to be armed with very vigorous powers of enforcement, and with heavy penalties for non-compliance with its provisions. After reciting in its preamble that great loss and injury are occasioned to the lands of the colony by the spread of the plant called the thistle, and that no measures can be effectual for its eradication, unless provision be made for its destruction on private as well as public property, the Act proceeds to provide the required remedy. By clause 1, any owner, lessee, or occupier of land in Victoria upon which, or on the half of any road adjacent thereto, thistles are growing, is bound, after fourteen days' notice, signed by a justice of the peace, to destroy all thistles upon such land, or, failing to do so, he incurs a penalty of not less than £5 or more than £20. Service of the notice at the occupier's usual or last known place of abode is held good, and all cases under the Act are determined in a summary way by two or more justices of the peace. The justices, however, have power to suspend the conviction on proof that the occupier has used and is using reasonable exertions to destroy the plant. No information can be laid against any owner of land until the Act has been enforced against the occupier or lessee, and no second information can be laid within thirty days after a previous conviction. If any owner, lessee, or occupier neglect or refuse to destroy thistles on his land for a space of seven days after the receipt of notice, any person armed with a written authority from a justice of the peace may enter on the land, with sufficient assistants, to destroy and eradicate the nuisance, and may cause the expense to be assessed by two justices of the peace, and recover them in a summary way. Persons armed with the written authority of a magistrate may enter on lands to search for thistles without being guilty of a trespass,

blished and long active Committee was to pay "to every person that shall bring to them any heads of old Crows, Choughs, or Pyes, or Rooks, taken within the Parish, for the heads of every three, a penny; and for the heads of every six young Crows, Choughs, Pyes, or Rooks taken, a penny; and for every six eggs of any of them unbroken, a penny; and likewise for every twelve Stares [starlings] heads a penny. All which said heads and eggs, the said distributors shall keep in some convenient place; and shall, every month at the least, bring forth the same before the Churchwardens and the six taxors before mentioned, or three of them; and shall, then and there, make a true account in writing what money they have laid forth and paid for such heads and eggs, and for the heads of such other ravenous birds and vermin as are hereafter mentioned; that is to say, for every head of Marten, Hawkes, Fursekite, Moldkite, Buzzard, Shag, Cormorant, or Ringtail, two pence; and for every two eggs of them a penny; for every Iron [Heron] or Osprey's head, fourpence; for the head of every Woodwall, Pye, Jay, Raven, or Kite, a penny; for the head of every bird which is called the King's-fisher, a penny; for the head of every Bullfinch, or other bird that devoureth the blowth [bloom] of fruit, one penny; for the heads of every Fox, or Gray, twelpence; and for the heads of every Fitchewe, Polecat, Weasel, Stote, Fayre-bad [*fare*-bad, *i. e.* bad-goer, Badger], Wildcat, a penny; for the heads of every Otter or Hedgehog, two pence; for the heads of every three Rats, or twelve Mice, one penny; for the heads of every Moldewarpe or Want [Mole] an half penny:—for the heads of every which birds and vermin last mentioned, the said distributors shall likewise pay and give to the bringer of them, for every head killed and taken within their several parish, as before is limited; and shall keep the same to be showed forth upon their account, in manner and form as is aforesaid. All which said heads and eggs shall be forthwith, after such account made, in the presence of the said Churchwardens and taxors, or of three of them, burned, consumed, or cut in sunder."*

and are not liable for any damage done unless inflicted unnecessarily and wilfully. Justices are empowered to issue orders for search, and to order the destruction of thistles."

* See 24 Hen. VIII. c. 10; 8 Eliz. c. 15; 14 Eliz. c. 11; and 39 Eliz. c. 18. It affords a striking illustration of how little the history of the Laws of England is known or heeded by Legislators and well-paid Bureaucratic

Commissioners, that in an Act of the Session of 1856, the first of these Acts is enumerated among a list declared to be then and thereby repealed. This Act had already been repealed more than 280 years ago ! But the preparers of the list contained in the Act of 1856, which is perhaps the most extraordinary illustration of random and reckless legislation that modern times have seen, were evidently quite unaware of that fact ; and all the knowledge and wisdom of both Houses of Parliament were equally innocent of it. The Act in question is an example, and a very suggestive illustration, of what is being now done in England, under pretence of "Consolidation of the Statutes." The following extract from a paper upon this Act, which I addressed, at the close of the Session, to a Cabinet Minister, will sufficiently call attention to the subject in this place. The Bill seemed so absurd a one, that it could not be supposed that the intention to press it was serious, or would at least be seriously listened to. Hence alone,—it being got through the forms of both Houses in the most silent manner, utterly unconsidered,—no opposition was given to it. The following was therefore sent, in order that there might be record of a *Protest*, the fact of which cannot, at a future day, be evaded.

"A Bill has lately passed the House of Commons, and nearly all stages in the Lords, called the '*Sleeping Statutes Bill*.' This Bill proposes the absolute repeal of nearly 120 Statutes of Parliament, without any cause assigned or discussion arising.

"The Bill passed through the forms of the House of Commons entirely *sub silentio*, and unobserved both by Members and the public. Such a Bill seemed so monstrous an attempt, that those interested in such matters conceived it impossible it could have been seriously introduced, or that it would be allowed to pass. Hence no measures have been taken to defeat it. The intent and effect of such a Bill are, to repeal, by a stroke of the pen, entirely *sub silentio* and undiscussed, a vast number of miscellaneous Acts of Parliament ; all of which have been passed with cause and after consideration. Some of these are, unquestionably, now obsolete. The precise occasions that others were passed to meet, may not at the moment exist,—though they may hereafter arise again. Others, however, do, at this moment involve considerations of the gravest character, some of them even embracing the highest constitutional questions.

"It is clear that the dignity and character of Parliament itself, require that no mass of Statutes shall be thus repealed, without a thorough knowledge of what is being done ;—without full reason assigned ;—and without a Select Committee first examining and reporting on the whole purview of what the Bill includes. It is clear that the dignity of the Crown is gravely implicated, in the royal assent being given to a Bill thus introduced and passed, for the repeal of Laws which are now guarded, by the solemn sanction of the coronation oath, from being altered or repealed except on full advice and consideration, neither of which has been had in this case. There is no precedent in English History for such a Bill ; and a precedent more dangerous to the independence of, and respect for, the Legislature cannot be conceived. Its validity, as an Act, will even be questionable. Such Acts as 39 Eliz. c. 18, 1 Jac. I. c. 25, 4 Jac. I. c. 1, and 3 Car. I. c. 5 (to which I beg to call attention), are quite the reverse of precedents for such a Bill as this, while they afford examples of sound legislative action, where needed, in such a class of cases.

"This Bill, not having proceeded from a Committee of Parliament, and not

The records of Parishes show frequent entries made in accordance with these provisions :* and no doubt we owe the actual extirpation of some, and the almost extirpation of others, of the "Pests of the farm," to the action of these parish Committees for the destruction of vermin. An instance of the appointment of a Committee for the destruction of a special and unusual pest of an analogous character, will be found in many Vestry Minute Books of no very distant date. It is interesting to the Ento-

having passed through the consideration of one, is nothing more nor less, in fact, than the overriding of Parliament by the dictation of an unseen and irresponsible individual or individuals. And I beg very advisedly and emphatically to say, that whoever prepared or sanctioned the list contained in this Bill, have given by it proof of their utter incompetence for such a task, and do but illustrate by it the mischief that will inevitably follow from any dealing with the Statute Law on such dictation or suggestion. Some Statutes contained in it have actually been already repealed nearly three hundred years ago ; some are inserted, while others in *pari materia*, (and equally 'sleeping') are left unnoticed ; some are highly beneficial, and need rather to be recalled into revived activity than repealed ; while others involve the highest constitutional questions, and touch points needing to be most carefully and solemnly discussed before the country, instead of being thus sought to be got rid of by a side wind.

"Such a Bill can have no surer tendency but to bring our Institutions and Legislature into disrepute and distrust."

* The ignorance of modern writers and talkers, in Parliament and out, on all that concerns the internal life and Institutions of the country will at a future period hardly be credited. (See before, p. 220, *note**) It has, for example, been thought a famous point, and a capital joke, by the opposers of Church Rates, within the walls of the House of Commons itself, to proclaim, with an air of amazement, the *discovery*, and to parade it as a monstrous *abuse*, that Churchwardens' accounts show charges for destroying vermin. These charges would necessarily appear on those accounts. In entering them, the Churchwardens simply fulfilled the wise custom and Law which their traducers (while setting up for Legislators) do not even know the existence of, though their own property is at this moment enjoying the benefit of it. To take one example,—I have before me the Churchwardens' accounts of a parish in Middlesex for 1773-4-5-6. In those years I find the following entries :—

	£	s.	d.
" 1773.—May 12 :—Paid for destroying a Pole Cat	0	1	0
Ditto for destroying 3 Hedge Hogs	0	1	0
Aug. 4 :—Ditto for destroying 3 Hedge Hogs	0	1	0
Ditto for destroying 6 Hedge Hogs	0	2	0
Nov. 6 :—Ditto for destroying a She Fox	0	6	8
Ditto for destroying 2 Hedge Hogs	0	0	8"

In 1774 are entered, for destroying Foxes, Polecats, Hedgehogs, etc., £2. 14s. 10d. ; in 1775, for the same items, £2. 17s. 10d. ; in 1776, for the same items, £1. 18s. 4d.

mologist as the memorandum of a remarkable phenomenon in the natural world. It is more interesting to the lover of mankind and of free institutions, as an illustration of how usefully and promptly those institutions adapt themselves, for the common benefit, to unusual circumstances; and thus do what no pedantic legislation or bureaucratic system ever can,—meet mischiefs as they arise, and quell them. The following is copied from the Minute Book of the Parish of Hornsey, in the County of Middlesex, under date of the 2nd of April, 1782 :—

“Ordered, that a Committee be appointed, of the following persons, namely [etc.], any five or more to proceed to business; to meet on Thursday next, at three of the Clock, at [etc.], for the purpose of destroying the insects that infest the hedges, etc., in this parish.”

In that year, great and serious alarm was created through the country by the ravages committed by an unprecedented number of the insects in question. Similar Committees were appointed in many parishes; and one shilling per bushel was, in some places, given for the webs cut off; which were burnt under the inspection of the churchwardens, overseers, and beadles. In one parish, fourscore bushels were thus collected, paid for, and burnt, in one day.*

9. *Committee for holding Land, etc.*

By an Act passed in the 9th of George the First, c. 7, the Churchwardens and Overseers, in their character, as already pointed out, of a joint committee of the Parish, are declared able to purchase and hire, with the consent of the inhabitants in vestry assembled, a house or houses to lodge the poor. A much later Act, 59 Geo. III. c. 12, pursues the same spirit, but with an enlarged declaration of the powers of this Committee. In each case, the consent or direction of the Vestry is declared necessary. Another section of the latter Act declares the power of the same committee to hold lands, and to sue, as a Body Corporate, on behalf of the Parish. Of this, more in the next Chapter.

* See Curtis's 'History of the Brown-Tail Moth' (London, 1782); 'Insect Transformations' (in the Library of Entertaining Knowledge), p. 208. The same facts are also mentioned in Kirby and Spence's 'Entomology.'

10. *Committee for managing Poor Relief.*

Gilbert's Union Act (22 Geo. III. c. 83), which has been already mentioned, is another Act which recognizes, and proposes action through, a committee appointed, if the inhabitants so will it, for and by single parishes, or by two or more united. Such committee is, in either case, to be a body corporate.*

11. *Select Vestry for Poor Relief.*

Another important illustration of the recognition and application of the Committee practice, is afforded by the before-named Act of 59 Geo. III. c. 12. A few remarks are necessary to make this clear.

Like every other human thing, the Committee system is capable of being abused. It has happened, in some places, that even Juries, instead of acting for the occasion and so being discharged, have been appointed for a year.† This is a clear perversion of the sound practice. And so it has happened, in some parishes, that the sound practice has got departed from, and the whole power of the Vestry has got engrossed into the hands, not of a Committee of and for the whole, but of a few self-elected persons. These have been called "Select Vestries." The origin of them may, no doubt, be often ascribed to a perversion of the Committee of "Assistance" which has been already named. That Committee was properly appointed, by the free consent and choice of the Parishioners, at their usual open Vestry. As time passed, and the numbers of the Committee dropped off, instead of going, as the remainder ought to have done, to the open Vestry for re-appointments, they took it on themselves to continue on and on, and to fill up vacancies; while the Body thus formed usurped the actual functions of the Vestry. This may, in some parishes, have been submitted to, till long use has worked so great and unlawful an abuse into a "custom." It remains, however, a gross and unlawful abuse, how long soever the time that may, in any place, have passed, during which it has been submitted to. Such select vestries often originated, or attempted to fortify their usurpation, by a

* See before, Chap. III. Sec. 7.

† This is so with some Leet Juries, at the present time, in England. It is not, however, so objectionable in these cases, as these Bodies partake more of a Representative character than of that of an ordinary Jury.

directly illegal act, in addition to being, as all of them have never been other than, illegally continued.*

The following passage from Sir Henry Spelman's tract 'De Sepultura,' published in 1641, is both interesting and important. It shows the time at which the abuse of "Select Vestries" began to creep in, and the directly illegal means thus often taken to bring them in, and sustain them. It also verifies the fact that they were a usurpation upon the ancient and time-honoured open Vestries,—the Vestries by Prescription and the Common Law,—which alone have ever had lawful power to make binding Bye-Laws.

Speaking of "Vestries," he says:—"Let not a dozen or sixteen private persons make orders to bind, like a law, the rest of the Parish that consented not. *What they have used to do, time out of mind*, [that is, in the open Common Law Vestry] I call not into question; but those Vestries that, *within these thirty years or thereabouts*,† have left their ancient form, supported by a lawful prescription, and contrived to themselves a new society, power, and jurisdiction over the rest of the parish,

* See the reference to the form contained in Gibson's 'Codex,' after, Chap. VI. The case of *Phillibrown v. Ryland*, 8 Modern Reports, pp. 52 and 351, clearly affirms that all Select Vestries are illegal. In this it declares the simple Common Law. It is true that that case went against the plaintiff. But it was only on a technical point. The Court of Queen's Bench distinctly affirmed, "that this action had been maintainable if a right [in the Vestry Room, as showing it not to be private property] had been shown." . . . "Every parishioner has a right to assemble." The following passage, from the argument in that case, may be usefully quoted here, as showing the sound views then held, and stated in the Courts of Law, as to the character and functions of the Parish:—"Since bye-laws bind the property of every inhabitant, it is reasonable every inhabitant should have a right to dissent from or to approve them. They have power of electing their own officers, amenable only to themselves. They are a corporation to make Bye-Laws for mending the Highways, and for making banks to keep out the sea, and for repairing the church and making a bridge, etc., or any such thing which is for the public good; all which was resolved in the *Chamberlain of London's Case*. And by the Statute 3 & 4 Wm. III. c. 11, and 7 Anne, c. 17, s. 4, they are made a body politick to several other purposes. as to tax and levy the rate for maintaining the poor, and to tax the parish to make and maintain engines for extinguishing fires, and by the Statute 9 Geo. [I.] c. 7, s. 4, they are made a body politick for purchasing workhouses to employ the poor. And consequently, every parishioner hath a right to be present at their public meetings in a vestry."

† Thus it is plain that these Select Vestries were one of the devices set on foot to follow up the illegal Canons of 1603.

countenanced by an instrument from the Ordinary under the seal of his Chancellor, and (as new things must have new names) are commonly styled *Selected Vestries*. I see the Bishops' names are used in them; whether [with] their assents and knowledge, I am doubtful. I assure myself their Lordships would do nothing against the Law; and I understand not by what Law they may at this day erect such societies, or endow them with such authority as is pretended. But, to deal plainly, I think those instruments confer more money upon the chancellors, than authority upon the Vestries. . . . What have they now for their money? or more (in effect) than if a private man had granted them as much? No doubt, many of the wise parishioners do perceive it, and some parishes have renounced it, and are turned back to their ancient Vestry."*

Irrespective of these unlawful Bodies, originating and acting as above, there was long the sound practice, in many parishes, of appointing a true Committee for the management of the poor, under the name of "Select Vestry." This was found so useful that the Statute of 59 Geo. III. c. 12, recognized the practice in the fullest form. That Act, by thus declaratorily recognizing it, wisely recommended it to wider application. It suggestively declares the power of any parish to establish a select Vestry,—that is, simply a standing Committee—for the concerns of the poor. But it provides, very properly, against the rock that old select Vestries split upon. The whole of this Committee (except the Minister, Churchwardens, and Overseers, who are to be *ex officio* members) are to be chosen each year, *by the whole Parish*, in Vestry assembled. And any vacancies are to be filled in the same manner. The notion of the Minister being chairman is excluded by this Act. This Committee, or "Select Vestry" as it is called by this Act itself, is to keep minutes of all its proceedings, and to lay the same, as well as all accounts, before the full Vestry twice every year. Thus the responsibility to the latter is maintained entire; which is always a matter of the highest importance, and is, indeed, *essential* to the efficient and satisfactory action of all Committees.

This "Select Vestry" presents an excellent example of the Committee system, unhampered by the theoretical devices through which it has been sought, more lately, to interfere

* 'De Sepultura,' pp. 22, 23, ed. 1641. See *Golding v. Fenn*, 7 B. & C. 765.

with the simplicity and real practical utility of the old and constitutional system.*

12. *Select Vestry under Hobhouse's Act.*

The evils and unrightness of the "Select Vestry" system, of the above-named abused kind, are so palpable, that the last-named Act is not the only one which has recognized the value of the true Committee system, together with supplying provisions against the growth and endurance of the abuses which have been mentioned;—abuses which, having, though unsoundly, been supposed to have got a sort of legal sanction through long usage,† thus justified, more than commonly, these statutory means of being shaken off. In the year 1831 an Act passed, commonly called Hobhouse's Act,‡ which was designed to meet both these objects. The "Select Vestry" under the Act last named was confined to the management of the Poor. Under the present Act, its functions are general.

There is some vagueness in part of this Act, and consequent uncertainty in its construction. It was, no doubt, introduced more immediately to meet the cases of close "select vestries." But it was not the idea of Sir John Hobhouse (Lord Brough-ton), who introduced it, that it should be limited in operation to those cases only.§ Such limitation is inconsistent also with general principles. The narrow method which has unfortunately got to prevail, in our time, of groping along by the fancied glimmer of some literal phrase in an Act of Parliament, instead of by the clear and steady light which is only to be got by keeping broad Principles always in view in the construction of all Acts of Parliament, has, however, led to its being set up, sometimes, that this Act cannot be applied except where a select vestry has already existed. If this were so, it would be a limiting and restraining Act, instead of a declaratory and remedial one. Already, without this Act, every Parish clearly possesses the Common Law right and power to appoint all the same Committees, and the same elective Vestry, as are therein named. This Act certainly does not take away, nor fetter,

* See, for example, before, Chap. III. Sec. 4; particularly pp. 137, 138.

† But see before, p. 238, *note*.

‡ 1 & 2 Wm. IV. c. 60.

§ I speak, here, from the written statement, which I have seen, of Lord Broughton to that effect.

such inherent power. It merely points out a method which may be adopted. It is true that one section (the twenty-fourth) provides specially for the case where, as already noticed, a select vestry does exist.* But, where such does not exist, the section is inapplicable,—that is all. The spirit and broad sense, and not the servile letter, of the provisions, are what should form the suggestive guide. The Act expressly declares that it is applicable in “*any* parish or parishes in England and Wales” having 800 rated householders.

To bring this Act into operation, a requisition of one-fifth of the whole ratepayers, being fifty at the least, must be presented to the churchwardens, requiring them to ascertain whether or not a majority of the ratepayers of the Parish wish the Act adopted.† The churchwardens are then bound to appoint, and give notice of, a time and place where votes on the subject shall be recorded. There ought to be a public meeting of the Parish to discuss the subject, before such votes are given; though the Act itself says nothing about this.‡ The Act will not be considered as adopted unless two-thirds of the votes given are in favour of it, and unless the whole number of votes given amounts to a clear majority of those who have been ratepayers for a whole year.§ The votes are to be given by number of heads,||—not on the vicious plurality of voting system introduced by Sturges Bourne's Act. If any churchwarden, or other Parish Officer, neglects to fulfil his duty in ascertaining the wish of the Parish, he is guilty of a misdemeanour. Steps ought to be immediately taken for his prosecution, and for compelling the fulfilment of the duty by mandamus.¶

* This section is one adopting the novel plan of elections by thirds, the mischiefs of which have been already noticed before, p. 138.

† Compare herewith the fourth section of Chap. III. (pp. 134–141) throughout. And see *R. v. Bassett*, 17 Q. B. 332.

‡ Most other of the Acts recognizing Committees, do mention this; for instance, Gilbert's Act, the Lighting and Watching Act, the Highway Act, the Burial Act, etc. Several other similar instances will be found in the present Chapter. See before, p. 61, as to the principle of *actual discussion*; which is the point essentially involved in all these cases.

§ See before, pp. 63, 64.

|| 1 & 2 Wm. IV. c. 60, s. 15.

¶ This Act contains a very absurd provision,—declaring that, if the application of it is once rejected, it cannot be tried again under *three years*. Compare pp. 136, 252. Such sections, differing from one another, prove, in themselves, the empiricism and absence of Principle which has alone dictated them.

If the Parish determine to adopt the Act, twenty-one days' notice is to be given of a Public Meeting to be held, for the purpose of choosing the Committees which the Act suggests. Of these there are three.

The first of these Committees is for the Inspection of Votes. Its members are to be chosen the first of all. Four are to be chosen by the Parishioners, in open meeting: four are to be appointed by the Churchwardens, the elected representatives of the Parishioners. This is in order to give a greater security, by means of a counter check. The choice of the first four must be by show of hands; and, in case of dispute, by actual division on the spot,—the true and only sound way in which votes ought always (as they still are in the House of Commons) to be taken.*

After the Inspectors have been appointed, two other Committees are to be chosen. It is the business of the Inspectors to receive and count the votes on the choice of these, and to make declaration as to the numbers. The one of these Committees consists of those who are to serve as the standing Committee of Vestrymen, to represent and act for the whole body of the inhabitants: the other consists of the Auditors of accounts. Both Committees are to be chosen by the single votes of heads, not on the plurality system.

A money qualification is named in this Act.† This varies from a rental of £40, within the Metropolis and places having 3000 householders, to a rental of £10 elsewhere;—a range which itself shows the unsoundness of the attempt to impose any such restriction on the Common Law liberty of choice.

The number of Vestrymen elected under this Act varies from 12 to 120, according to the population. There is to be an annual election; but the unsound system is adopted by this Act, of only one-third annually going out, instead of the whole Committee going annually before the Parish. It has been already shown that this is one of those devices that proceed from half-eyed pedantic theory, instead of from practical sense. Those who have done their duty will be re-elected;—and so things will never be thrown into confusion by reason of the whole number being kept responsible. On the contrary, if there be a bad system at work, or if fresh questions are coming under discussion, which need the direct expression of the opinion of

* See before, pp. 59, 60 *note* *.

† See before, p. 137.

those concerned,—as must be always arising in those immediate affairs that concern local Bodies,—the infusion of a mere third can neither neutralize the former nor embody the latter. The triennial device is really one which makes the Body, be it what it may, to which it is applied, practically irresponsible, and *not* a reflex of the Body represented.

This elected Committee is to exercise all the powers of the Vestry, whatever its form, that may have acted before. Thus, the powers, whether those of Vestries at Common Law, or which may, in any parish, have been given by any local act, remain unaffected. They are simply to be carried out by the new representative Body;—which does not, however, it must be remembered, supersede the regular, though only annual, public meeting of the whole Body of the Parishioners.

Regular minutes and accounts must be kept by the Representative Vestry elected under this Act.

The third Committee, chosen at the same time that these Vestrymen are chosen, is one of Auditors of accounts. These are to audit all the Parish accounts whatever; including even those of any Boards that may exist within the Parish, though having powers apart from and independent of the Vestry.

This Act has an important clause as to Parish Estates and Charities. The Vestry is required to make out and publish, every year, an exact account of these, both as to amount, place, appropriation, and all other details. This provision affords another example of the long-used habit of well-managed Parishes, adopted and ordered under their own Bye-Laws, becoming at length embodied in a suggestive form in a general Statute.*

Hobhouse's Act had been adopted, among other places, in several of the Metropolitan parishes. But its application to them has been repealed, and the whole of the Metropolitan Parishes brought within a special system of representative Vestries, by the Act called '*the Metropolis Local Management Act, 1855.*' The arrangements as to elections vary but little under this Act from those under Hobhouse's Act; and, as it relates to the Metropolis only, it would be out of place to enter on any of its details here.†

* See before, p. 184; and after, at the close of the next Chapter.

† I have published an edition of this Act, with full introduction, notes, and index; in which the history, defects, and means of practical application of the Metropolis Local Management Act, 1855, are shown at length.

13. *Inspectors of Lighting and Watching.*

Attention has been already drawn, in the previous chapter, to what is, in fact, another recognition of the Committee System, in the appointment of a Board of Inspectors under the Lighting and Watching Act of 3 & 4 Wm. IV. c. 90; though the special character of the objects of that Act, as embodying a modification of the watch and ward arrangements,—which are imperative on every place, at Common Law,—seemed to make it proper to treat more fully of it under the head of Parish Officers. But the Inspectors are a true Committee. The Committee thus appointed is in the nature of a Body Corporate, to sue and be sued in the name of any one of its members, without abatement of action in case of death.

14. *Highway Board.*

One of the most important of the Parish Committees thus recognized, and the application of which is suggested, by Statute, is the Highway Board. Its sphere of action is wider, and of more continual bearing and power of adaptation, as regards the welfare of the Community, than that of any other special Parish Committee. The eighteenth section of the Highway Act recognizes, in express terms, the importance of “the repairs of the highways in large and populous parishes being under the direction and control of a number of the inhabitants, to be chosen and appointed as a Board for that purpose, with necessary powers.” The simple constitutional principles of the Common Law are, for the most part, followed. The appointment of the Committee rests “entirely with the assembled Vestry.* If two-thirds of those present at the Parish Vestry, where there is a population of more than five thousand,† assent to it, a Board, consisting of any number from three to twenty, is to

* See before, p. 57.

† What is said above, as to limitation of numbers, is, of course, as applicable in this case. Still stronger observation might be made on the limitation of the population to 5000. This is an unfortunate and quite inexcusable mistake, which greatly detracts from the value of this clause, as it acts in apparent *restraint*, instead of declaration, of the Common Law right. The Common Law power cannot be actually thus restrained, however; and there is clearly no ground of *reason* in suggesting any limitation of Population.

be appointed, having a corporate character, and having a corporate name, as "the Board for Repair of the Highways in the Parish of ——" This Board appoints what officers it needs; such as Assistant Surveyor, Clerk, Treasurer, etc.;—with such salaries as it thinks fit. The appointment of any or all of these is, however, entirely optional; and it will always be well to have the opinion of the Vestry expressed as to what course, in these respects, will be most approved. The Board has full power to hire or, with the consent of the Vestry, to purchase premises; and to do all other acts necessary to ensure efficient action. It cannot, however, be too often remarked, that the way in which confidence and the most satisfactory action will always be best ensured, will be by conferring with the Vestry before any fresh step of importance, either in the machinery of the Board itself, or affecting the general interests of the Parish, is finally determined on and carried out.

It must be distinctly understood that it is solely the appointment of this Committee by the Vestry, which erects it into being and authority, and vests all powers in it. No signature of Chairman, nor any presentment to nor confirmation by justices, is necessary. In fact, the justices have nothing to do with a Highway Board. On the matter of the Surveyor's accounts, which the Surveyor, appointed if there is no Highway Board, has to lay before the Justices,* the course to be pursued by the Highway Board is far more simple and constitutional, and therefore more efficient. It is bound to present a complete copy of its accounts to the Vestry; and to make a direct return to the Home Office, under 12 & 13 Vict. c. 35.

Some misapprehension may arise on this matter, in consequence of the words "Assistant Surveyor" being found in sect. 44 of the Highway Act. This is owing, however, merely to some want of precision in the terms used in different sections of this Act; the origin of which is clear, but which instructively illustrates the care needed in the wording of Acts of Parliament, and the confusion that follows from using, in different Acts, different terms to express the same office, or the same terms to express different offices. Under the old Highway Act,† there was an "Assistant Surveyor" appointed in certain cases, for Parishes and places. That Assistant Surveyor had nothing at all to do with practical works; but he had the special duties of

* See before, pp. 112, 113.

† 13 Geo. III. c. 78, ss. 2 and 4.

making assessments, and collecting and paying all moneys. He was, therefore, very properly required to render a full account thereof. The "Assistant Surveyor" under the present Highway Act, fills an exactly contrary position. He is simply an officer of the Board, and confined to practical works. He has nothing to do with making the assessments, or collecting or paying moneys. The presentation or verification of accounts by this Assistant Surveyor, would therefore be a sheer impossibility. But the present Act very properly required all officers who were in office at the time it was passed, to continue to act, and be subject to the same duties as theretofore, until surveyors were appointed under this Act. The words "Assistant Surveyor" would, therefore, still apply to all who were *at that time* in existence. But the application of the words wholly ceased so soon as elections were made under the New Act.* Section 18 requires that the Highway Board shall, upon the expiration of each year, and before or on the day of new election, present to the Vestry copies of all its accounts, and of the minutes of its proceedings. Sections 44 and 45 do not apply at all in the case of a Highway Board. The last clause of section 18 provides the substitution, in that case, for what is done, as to accounts, by Surveyors where there is no Board. And the intention and reason of this are plain enough. The very ground of the appointment of a Highway Board, as stated in the section itself,—namely, that all matters should be "under the *direction and control* of a certain chosen number of the inhabitants,"—takes away, in such cases, any pretext

* This is clearly the only explanation of these words being retained in section 44, which is consistent with any intelligibleness. It is to be observed that, following the form of the old Act, the words "Assistant Surveyor,"—used in the old Act as regards a totally different officer to the one of that name under the new Act,—are retained in the first clause of the section, where their inapplicability to the case of a Highway Board is palpable on the face of it ;—that clause providing for doing exactly the equivalent thing, by *Single Surveyors* (including the old "Assistant Surveyors"), as the last clause of the 18th section provides to be done by a *Highway Board*, where such Board exists. When, however, we come to the material parts, of what is to be *done* before the Justices, both as named in this 44th section and throughout the 45th, the words "Assistant Surveyor" are dropped : they do not once occur. They only occur where their application to the case of a Highway Board is absolutely impossible. It is a fundamental rule, that every Act of Parliament must be construed in such a manner as makes all its parts consistent with each other, and consistent with obvious intention.

that may be set up, as to the need of a check on the accounts of single Surveyors.*

The application of 12 & 13 Vict. c. 35 is clear enough. The second section of that Act requires that the "clerk" to all trustees or commissioners (terms which include a Highway Board) "appointed under any Act of Parliament," who "are authorized to pave, cleanse, or repair any highway,† shall, within thirty days next after every annual, or other periodical, account of the receipts and expenditure," prepare a statement of particulars, and "transmit such statement" direct to the Home Secretary, *instead* of the same coming through the Justices.‡ Care must be taken that this is sent in to the Home Secre-

* See before, pp. 112-114.

† The Highway Board has all of these things as its functions.

‡ The following illustration, for which I am indebted to the courtesy of Mr. Wheatley, Clerk to the Sheffield Highway Board, shows that the Home Secretary rightly applies and insists on this Act. The Highway Boards in question ought of course to have complied, earlier, with the requisitions of the Act;—namely, within thirty days after the account rendered to the Vestry.

Mr. Wheatley says:—"At each of the last Easter Vestry Meetings, the accounts have been submitted to a searching discussion, and afterwards unanimously adopted. On the 28th of April, 1853, the Clerk to the Justices sent the accounts of some other of the Townships in the Parish to the Home Office [stating, at the same time, that none had been presented by the two Highway Boards there].

"I heard no more till November last, when I received a Circular from the Home Office, of which the following is a copy:—

"*Road Office, Whitehall, Nov. 1853.*

"Sir,—The general statement of the income and expenditure of the Board authorized to pave, cleanse, or repair the Highways, Roads, Pavements, etc. within the Township of Sheffield, for the year 1852, not having been received at the Home Office within thirty days after the annual settlement or audit of the accounts, pursuant to the Act of the 12th & 13th of Vict. c. 35, I am directed by the Secretary of State for the Home Department to desire that you will be pleased to transmit the said statement in writing immediately, according to the inclosed form (*as far as circumstances will permit*), in order that the abstracts thereof may be completed for presentation to Parliament, agreeably to the said Act.¹

"You will be pleased to transmit your reply addressed as per inclosed form.

"I am, Sir, your obedient servant,

"HENRY FITZROY.

"To the Clerk to the Board."

[This requisition was immediately complied with.]

¹ The terms used throughout this letter are chiefly taken from those specially employed in sec. 2 of 12 & 13 Vict. c. 35.

tary within thirty days after the day of the presentation of the annual account to the Vestry. It must be signed by the Clerk to the Board.

It will be a matter satisfactory to all parties, if the Balance Sheet of the Highway Board is always laid before the Parish Auditors, before the day when it is necessary to present the accounts to the Vestry.* This will do much towards preventing mere factious objections being raised at the Vestry itself, or at any future time.

An important benefit derived from the appointment of a Highway Board is, that such Board is recognized as the Local Authority under the Nuisances' Removal Act; and has, therefore, all the powers necessary to carry into effect the highly important objects of that Act. These powers are in entire accordance with those which, apart from that Act, belong, as an essential part of their functions and duties, to the Highway Surveyors. It is little more than some of the modes of machinery that are different. But Surveyors otherwise appointed under the Highway Act, do not possess, in themselves alone, these powers.

When a Highway Board has been once determined on, the consideration of whether or not such a Board *shall be appointed*, cannot come on again for annual discussion. The very reason of the thing, and the manifest inconvenience to the public from any sudden and capricious changes in the organization of its administration, make this plain. The analogy of other similar Bodies confirms it. The members of the Board will be annually appointed, without re-opening that previous question. The numbers to be appointed on the Board may unquestionably be varied, from time to time, as the Vestry thinks fit; and any special instructions may be at any time given to the Board by the Vestry. The Vestry will also be always a proper place to bring forward and discuss any transactions of the Board;—an observation which applies to the case of all Parish Committees; and the practical realization of which, will be an essential matter towards maintaining that due sense of responsibility which all Committees and representative Bodies should always feel.

As to the advisability of adopting the plan of a Highway Board, in place of the one or two single Surveyors, wherever the Parish has outgrown the character of a mere scattered farm-

* See before, pp. 183, 184.

ing neighbourhood, there cannot, among unprejudiced men, be a difference of opinion. Nothing can be clearer than the truth of the preamble of the section of the Highway Act on this matter; which sets forth that "it is expedient that, in large and populous parishes, the repairs of the highways should be under the direction and control of a certain number of the inhabitants." Without this, there can be no responsibility. Jobbery will be certain.

15. *Baths and Wash-houses Committee.*

Among other purposes that have, of late years, been recognized as coming within the old Common Law designation of "*for the general good*,"* has been the provision, at the common charge, of public baths and wash-houses and open bathing places. It was formerly the custom that every parish should provide a public place for healthy and useful exercises; and the "Parish Butts" were rightly required to be everywhere kept up, under heavy penalties. It is no mark of modern improvement, or of progress in social well-being, that such things have fallen into desuetude. The suggestion for public baths and open bathing-places may, perhaps, be looked at as a sound step in the direction of a coming back again to the older and wholesomer practice. It is quite clear that it is consistent with the Common Law.

Two Acts have passed upon this subject.† These Acts declare the power of any Parish to determine on the adoption of measures for the above purposes. By a most preposterous restriction, indeed, the approval of the Home Secretary is made necessary; so that, if the occupant of Whitehall happens to have an irritable skin, and does not, therefore, find shower-baths agree with him, it is no matter how much the parishioners of Smudgewick in Cumberland or Dykesdeep in Devonshire may appreciate the advantages of soap and water. According to these Acts, the fiat may go forth, from the capricious inmate of Whitehall, that all shall still remain as "the great unwashed." Centralization and meddling functionarism do indeed show themselves run mad, in such attempts at in-

* See before, pp. 47, 134.

† 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61. See before, p. 65, *note* †. Within incorporated Boroughs, the Acts are carried out by the Council.

terference and dictation. Such attempts justly make legislation ridiculous, and can but bring it and its administrators into contempt.

Though the spirit which could suffer such a clause to appear in an Act of Parliament is not the less to be condemned, it is not very likely that any Home Secretary will set himself up as the avowed enemy of soap and water. It may be assumed that, heartily ashamed, as any but a functionary born and nursed in red-tape must be, of this blot on the Act, all Home Secretaries will be very careful to have it understood that it is a dead letter, and to be treated as a mere form. If, then, any inhabitants of any Parish consider the establishment of Baths, Wash-houses, or Public Bathing Places a good and wholesome thing, they must get up a requisition, with the signatures of ten or more ratepayers, and hand this to the Churchwardens. The latter are then bound to summon a special Vestry, to consider the subject; of which meeting seven days' notice must be given. As usual in such cases, the votes of two-thirds must be given for the resolution of adoption, or it will not be held carried.

If the Act is adopted, the Vestry will proceed to choose the Committee of Ratepayers to carry the desired objects into effect. This Committee can be determined to consist of any number, not being less than three nor more than seven. It will be a Body Corporate, by the name of "The Commissioners for Public Baths and Wash-houses in the Parish of —, in the County of —;" and can, in that capacity, take, hold, and sell land for the purposes of its appointment.

The Committee will have an office, and hold regular meetings. It will appoint officers and servants; and, subject to the approval of the Vestry,—a very different thing from that of the Home Secretary,—may fix such salaries and wages as it thinks proper and reasonable. It must keep regular minutes of its proceedings; and keep full and regular accounts, which any Parish Officer or Ratepayer may see and examine, and copy if he pleases.

The Vestry is to appoint two Auditors every year, who shall, in March each year, audit the accounts of the Committee, and report thereupon to the Vestry. This is in accordance with the course already pointed out as that proper to be taken in regard to all Parish accounts.*

* Before, pp. 183–186.

The Committee cannot spend more money than the Vestry sanctions. This is an important feature of the Act. The very wholesome effect of it will be, the maintenance of a constant good understanding and regular communication between the Vestry and the Committee. What the Vestry sanctions, as proper to be expended by the Committee, is to be paid by the Overseers; who are bound to add the amount to what is needed for Poor Rate, and collect it, and pay it over to whomever the Committee shall appoint to receive it.

The Committee may fix moderate charges for the use of the Baths or Wash-houses or Bathing Places. Low schedules, which are not to be exceeded, are annexed to the Acts as a guide. This is a mistake: cost must depend on circumstances.

With the consent of the Vestry (but not without) the Committee may borrow money to fulfil needful works; and, with the same consent, it may appropriate any Parish lands, or purchase, or hire at rent. It may make proper and necessary bye-laws, though these must be approved by the Home Secretary;—whose knowledge on the subject of bathing, and of the apparatus, needs, and details of the washing-tub, will always, no one can venture to doubt, exceed that of all the bathers and washerwomen in all the Parishes in England.

If two Parishes like to join in the good work, they can do so, upon such terms as the Vestries of each shall mutually agree on.

Wherever these Acts are proposed to be adopted, they should be themselves consulted as to all details. The above outline will be sufficient to give a general idea of their provisions. It is right to add that, with the anomalous exceptions alluded to, and a few others of a similar nature, including some points that have been already and some that will be presently noticed,* the general spirit and provisions of these Acts are good. It would be well if they were better known, and their suggestions more often put in practice, than they are at present.

In connection with Baths and Wash-houses—the Acts just named as to which apply to the whole of England and Wales—it may be well to mention that the Metropolis Water Supply Act of 1852† gives power to the Churchwardens and Overseers, who have been already seen to exist as a joint Committee

* Such as the election by thirds; before, p. 138, 9 & 10 Vict. c. 74, s. 6. See also, after, in treating of the Museum and Library Committee, p. 254.

† 15 & 16 Vict. c. 84, s. 27.

for many purposes, *with the consent of the Vestry of the Parish*, to require water to be supplied at the expense of the owner or occupier of any house in any Parish within the limits of the Act, where this can be done on certain reasonable terms which are specified in the Act.

16. *Public Library and Museum Committee.*

In the same direction as Public Bathing Places, is the recognition of the public usefulness of establishing Free Museums and Libraries in and by Parishes.* In 1855 an Act passed suggesting the establishment of the latter.

The mode of proceeding in this case is much the same as in that of Baths and Wash-houses; but there are numerous differences of detail; which adds proof to what has been so often seen in these pages, of the want of any definite principle, clear ideas, or practical knowledge, in modern legislation. All these differences, which are found at every point and at every turn, show how much more sound and practical it would be to adopt, once for all, such a general declaratory measure as will presently be noticed.

The population of the place, or united places, (for two or more parishes can here also join) where it is proposed to apply this Act† must amount to 5000 according to the last Census. Within twenty, but not sooner than ten, days after receiving a requisition signed by ten ratepayers, the *Overseers* must summon a Vestry, giving *ten* days' notice thereof, to consider and determine on the adoption of the Act.‡ If once rejected, the proposal cannot be made again for a year.§ Besides the ordinary Vestry summons, this meeting must also be advertised in a Newspaper seven days before it is held.

This Act contains a very odd provision as to the Votes. In large places these are to be taken by heads only. But in smaller places it seems that men's wits are at a discount. Where the population *does not exceed eight thousand*, any ten

* The Libraries and Museums Act of 1850 was confined to Boroughs. That Act is repealed by 18 & 19 Vict. c. 70; it having been since discovered that it may be good for men to read books, though not living in close towns.

† I put this in italics, because the powers of the Common Law cannot be thus ousted. See before, p. 244 note †.

‡ The "Vestry" under this Act embrace, in terms, both the definitions already quoted before, p. 65 note.

§ See before, p. 241, note ¶.

ratepayers may, by requisition in writing, demand that the votes be taken on the plurality system. Two-thirds of the votes are, in either case, necessary to determine the adoption of the Act.

If the Act is adopted, a Committee of not less than three nor more than nine must be forthwith chosen to carry it into action. This Committee will be a Body Corporate, by the name of "The Commissioners for Public Libraries and Museums for the Parish of —, in the County of —." There are to be annual elections on the doctrinaire system of thirds.*

The Committee must hold regular meetings, and keep minutes and accounts. But it is a singular retrogression in this Act, that the Audit of the accounts is made a mere nullity, by being, in fact, (though there is an unmeaning alternative) always put into the hands of the Poor Law Auditor. The character of that Auditorship has been already pointed out.† A Poor Law Auditor does, however, get a certain amount of experience, by continual habit, in the matters of Poor Law expenditure; so that, apart from the inherent viciousness of the system of his appointment and tenure of office, he may often get through that part of his duties without doing much harm. But the performance of similar duties in respect to the accounts of a Library and Museum Committee, is wholly beyond the sphere of the duties of his office. It is a mere piece of mischievous pedantry to have introduced such a functionary into this Act. The right and only sound course is, to refer the accounts to auditors chosen by the Parish, as in case of the last named Committee.

The expense of calling and holding the meeting to determine on the measure, must, of course, in this and all similar cases, be paid by the Overseers out of their rate, if the Act is not adopted. If this Act is adopted, a special rate is to be made to carry out its objects; which rate is not, however, to exceed the annual sum of one penny in the pound, though money can be borrowed on the security of such rate. The amount to be spent, as well as any amount borrowed, must however be first sanctioned by the Vestry. But, as disinterested philanthropists naturally feel, in their closets, that there is very alarming danger in England that the love of learning will make men unable to take care of their own affairs, or how they spend their own money, or how they allow their own chosen com-

* See before, p. 242.

† Before, p. 186.

mittee any to spend, it is most kindly provided in this Act that Her Majesty's Treasury, and also the Poor Law Board, shall exercise a paternal solicitude over those affairs which it is obvious that the inhabitants of the Parish whom alone they concern, cannot be trusted to know anything about! The bureaucrats at Whitehall must, of course, always know much better the circumstances, wants, needs, and capabilities of every place than the Parish itself can! The only safety for England is in functionaries and red-tape!

It is certainly impossible to express, in terms sufficiently strong, the sense of disgust and contempt which every right-minded man must feel, at these perpetual unprincipled attempts of an all-grasping functionarism, to force itself into affairs with which it has nothing to do; to intrude an impertinent interference and intermeddling control over things which concern the men of each neighbourhood, and them only.* The same distrustful and meddling interference is found in other parts of this Act; as is also the case in the Baths and Wash-houses Acts.

When the Committee has got established, and has outgrown the swaddling-clothes of that paternal solicitude which stands ready, at the outset, to stifle it at any moment, it can proceed to erect or alter buildings, so as to make them suitable for Public Libraries or Museums, or both, or for Schools for science or art. It will provide the Library and Museum with proper accommodations; and must purchase Books, Newspapers, and specimens suitable for both. It will appoint proper servants and officers, and put the whole under such regulations, as to use by the public, as it finds most fitting.

17. *Burial Board.*

Another Parish Committee has lately come into frequent existence, under somewhat anomalous circumstances. At Common Law, the Parish is bound to provide a place for the burial of every man who dies within it. As, in course of time, burial-grounds have become filled, the necessity for additional ground, or fresh places altogether, has grown up. At the same time, the growth of town populations has oftentimes made burial-grounds which were, before, the common graveyards of the place, to become unfitting, longer, for such use.

* See before, bottom of p. 125; pp. 133, 181, and 224 *note*.

What concerns the Churchyard of the Parish, and the decencies of burial, and the need for fresh ground, arising as above, has heretofore been dealt with by the Vestry and the Churchwardens. When any special matter has arisen in relation thereto, the habit has been, to appoint a Committee to consider it and report upon it to the Vestry; and then for the Vestry to carry it out.* Doctrinairism, however, conceived that it had found, here, a capital opportunity for the aggrandizement of its favourite new system of functionarism in England; and sought, accordingly, to lay violent hands upon the whole matter. That it did this in the most empirical manner, with its usual self-satisfied ignorance, and, all along, without the least notion of what it has been about, and without taking the trouble to be guided by any of that experience which numberless centuries of the universal use of this Common Law right and custom in England had put within its reach, are demonstrated by the fact that, no sooner did it begin to deal with the subject, in the shape of legislation, than, year after year, fresh legislation was brought in, to repeal, alter, "amend," contradict, and tamper with, its own previous legislation.† A later Chapter will be the most convenient place to consider the existing details of the legislation on this subject.‡ It is enough now to say that the appointment, by the Vestry of any Parish, Township, or other Place,§ of a Committee to give special attention and superintendence to this matter, has (most unwillingly on the part of the doctrinaires) been compelled to form a prominent feature of the late legislation on the subject; and that such Committee, under the name of "Burial Board," is to be a Body Corporate. While compelled to yield thus far, and though the Acts relating to this subject thus contain many provisions in common with the Acts as to Baths and Wash-houses and Public Museums and Libraries, their authors have since sought, with continually advancing strides, to make use of the former Acts to extend, still more mischievously and vexatiously than the latter Acts do, the ever-grasping objects and all-meddling interference of selfish and intrusive functionarism.

* An example will be found in Chap. VII. Sec. 12.

† The Acts relating to this matter are 13 & 14 Vict. c. 52; 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; and 18 & 19 Vict. c. 128.

‡ Chapter VII. Sec. 8.

§ See 18 & 19 Vict. c. 128. s. 12.

18. *Nuisances' Removal Committee.*

A highly important recognition of the Committee principle has lately taken place, in pursuance of suggestions made in the first edition of this Work, with regard to proceedings for the removal of one class of Nuisances. Existing Bodies in every place are now recognized, instead of the Board of Guardians, as the Local Authority; and, if no specific Body has before existed in any Parish, it is declared to be open to it, either to elect a special and unhampered Committee for the purpose, to be called "the Nuisances' Removal Committee," or to leave the matter to the Overseers and Surveyors of the Parish, together with the Guardians nominated for the single parish, who will then form, together, a Committee to fulfil this class of duties.

I have elsewhere treated so fully on the subject of this Committee that it is unnecessary to enter further on it here.* It is the most satisfactory acknowledgment of the Committee principle and practice that recent legislation has given us.

Such† are some of the more important of the many practical examples, and Statutory recognitions and applications, of the old Common Law method, of carrying out objects for the common welfare by means of Parish Committees. In a later part of this Work, where Parish Records are treated of, many other

* "Practical Proceedings for the removal of Nuisances, and execution of Drainage Works in every Parish, Town, and place in England and Wales, under the Nuisance Removal Act, 1855, and by other course of Law: with numerous Forms, and complete instructions for the conduct of Parish Committees." (Second Edition, 1856.)

† Some persons may think that Local Boards of Health, under the Public Health Act, 1848, should be included here. This is a mistake. They are no more Parish Committees than Boards of Guardians are. Neither in *origin*, mode of *appointment*, *authority*, nor *action*, have they any character of Parish Committees, or means of real Local Self-Government. They are not adopted voluntarily,—without which they can have no reality as Committees or means of Local Self-Government,—but are enforced on places by mere arbitrary authority; often by the most dishonest means. They are appointed, not by the Vestry, or in any open and honest manner, but on the secret nomination system; by plurality of voting; and in numbers dictated by an arbitrary and irresponsible central Board. When appointed, they are little better than the mere tools and creatures of the arbitrary and irresponsible central Board, which, without regard to the wants or wishes of the inhabitants, has enforced them upon the places where they exist; and whose charlatan schemes they are forced to carry out. They are not masters even over their own Surveyor.

incidental illustrations of the practical application of this important means of accomplishing objects useful to the public welfare, will be given.

There are some considerations which ought to be always borne in mind with respect to the action of these and all other Parish Committees. Unless they are so, the action of such Committees can never be satisfactory.

First: the action of all Committees should be maintained in as close relation as possible to the Vestry itself. It is thus only that mutual confidence will be ensured, and therefore the action be always satisfactory. *Reports* should be presented by the Committee to the Vestry at regular periods; in which its proceedings should be stated, and an account given of its past and prospective expenditure, if expenditure is authorized to it.

Second: A Chairman must be appointed to every Committee; who shall have a certain fixed amount of authority given him, so that he may be able to act, in cases of emergency, in the name of the Committee, and may summon it if special need arise. Such Chairman will have a casting vote upon occasion.*

Third: Every Committee should begin by laying down for itself certain rules or orders of procedure—Standing Orders they are commonly called—by which it will guide its own conduct; and it must have regular Minutes of its proceedings.

Fourth: A mode, place, and time of summoning the Committee must be determined on when it is appointed; and these must be regularly carried out. Else, a Committee may be appointed for the best purposes, and, it being nobody's business to call it together, it will prove simply abortive.

Fifth: A *quorum* must be fixed, without which the Committee cannot act. This point is a most material one. If, in the Act of appointment of a Committee, a quorum is named, that quorum, though not constituting a majority of the whole number, is competent to act. But, unless such quorum is named, no business can be transacted unless a *clear majority* of the whole number is present. This applies equally, whether the Committee is one appointed in accordance with the suggestion of an Act of Parliament, of which so many examples have been given above, or one appointed by the Vestry of its own original motion.†

* See before, pp. 58–60, as to the office and duties of Chairman.

† See the very able judgment of Bayly, J., in *Blacket v. Blizard*, 9 B. & C. 857, and that of Parke, J., in the same case, p. 862: and see *R. v. Bell-*

Having shown in detail, in another Work, the arrangements that will be most conveniently made for the conduct of such Committees on all these points, and given there full suggestions as to the rules and Standing Orders of proceeding, and all matters connected therewith, it is unnecessary to enter more fully into any of these topics here.*

In the choice of such Committees, the most convenient course is the nomination of a complete list. It is then open to any one else to nominate another list. This may either contain wholly different names, or may include some of those which the first list contained. It will be obvious that, unless this course of election by *lists* is followed, the choice of a Committee may be protracted almost indefinitely, and so practically be defeated. The Court of Queen's Bench will, therefore, support this course of election by lists.†

It must never, either in the consideration of the subject of Committees generally, or in dealing with any of the Statutory recognitions and applications of it that have been quoted, be forgotten that the Committee system is a Common Law Right and Practice; one which depends on no Statutory authority or sanction to give it validity, or to enforce its action. Any such Committees may now be appointed by any Parish Vestry, and clothed with full power to carry out any object of actual common interest, apart from reference to any Act of Parliament. And, in the case of Committees appointed under the suggestion of any Statute, the *details* as to which are but incompletely suggested therein, those details must be filled up by the inherent Common Law powers of those who appoint them.‡ The inconsistencies

ringer, 4 Term. Rep. 810. Many of the above named Acts, but not all, name a quorum. If it is thus named, this becomes, where the Act is "adopted" by the Parish, a part of the Act of appointment of the Committee.

* See "Practical Proceedings for the removal of Nuisances, &c. ; with *complete Instructions for the conduct of Parish Committees.*" Second Edition.

† R. v. Brightwell, 10 A. & E. 171.

‡ For example, in case of deficiency of numbers, through death, or inability to act, or otherwise, the numbers must be filled up by the Vestry, although, as in case of the Highway Board, nothing is said about this in the Act. In the same way, the Vestry can dismiss a member (in the same way as it can a Churchwarden), or accept a resignation, if it think fit, and appoint another member in place of the one resigned. It need hardly be added, that no member of a Parish Committee or Board can resign to that Committee or Board. He can only resign to the Vestry. An officer appointed by the Committee resigns to the Committee. Every resignation must be tendered to the Body

that a comparison of the various Statutes show, on many points, do but give proof of the empiricism that marks all of these, and that the Common Law alone is the safe guide.*

It is unfortunately true that some persons, in the too great tendency of our time to let thought and attention to selfish and material interests engross everything, are disposed, many times, to raise obstructions and difficulties in the way of the action of such Committees. The raising of such obstructions and difficulties has, however, only been rendered possible by the numberless meddling advances of Centralization in England of late years; which have so much attempted to interfere with and control local action, that men have, not unnaturally, lost confidence in their power of carrying out needed works by means of our old and free Institutions. The public health, the public safety, and the general welfare, as well as common progress and improvement, have all suffered, and are daily suffering, from this cause.

Those who have taken an active part in promoting local improvements, must be too well aware of the hindrances continually thrown in the way, by doubts and difficulties thus enabled to be raised by the opponents of improvement. On the other hand, the remarkable inconsistencies which are found upon comparison of the various Acts of Parliament passed to recognize individual committees for special purposes, clearly show that what is needed, and what alone is consistent with a soundly practical and statesmanlike course, is, the short *re-declaration*† of the powers which the Parish, as an Institution of Local Self-Government, has, and has always had, at Common Law. The inherent existence of these powers in every Parish, and applicable to all cases, has been already shown, by testimony and upon authorities which no Government nor Judge can be so from whom the appointment came in the first instance. No such resignation ought ever to be accepted as a matter of course, nor without good reason assigned.

* One example has already been given in p. 241, note ¶. The *numbers* who are to form the Committees afford another, truly ludicrous. Thus, the Highway Act says from 3 to 20; the Lighting and Watching Act, from 3 to 12; the Baths and Wash-houses' Act, from 3 to 7; the Libraries and Museums Act, from 3 to 9; the Nuisances' Removal Act, 1855, any number under 12. What evidence of practical care and guiding principle is exhibited in all this unmeaning variety? The whole is seen to be mere empiricism.

† See further, and particularly, on this subject, 'Local Self-Government,' pp. 154, 155.

bold as venture to impeach,—however inconvenient and full of rebuke the existence of such powers may be to the centralizing and bureaucratic nostrums which seem to be the extent of grasp of the professed statesmanship of our day.

It was to remedy the hindrances thus raised up, to do away with the inconsistencies thus existing, and to accomplish what is thus actually needed, by making thoroughly known the powers inherent by the Common Law in every Parish,—and so leave the fulfilment of local duties without excuse,—that, in the Session of 1854, a Bill was introduced into Parliament, intitled, “*A Bill for enabling the Vestries of Parishes in England and Wales to exercise certain Powers for effecting local Works and Improvements in their respective Parishes, and promoting the common Welfare of the Inhabitants.*”

It is to be regretted that the word “*enabling*” was inserted in this title instead of the words “*declaring the power of.*”^{*} It was not an “*enabling*” Bill at all. It was simply *declaratory* of the Power that has always been inherent in Parish Vestries, to take measures for all things that are for the Common good. Happily, though this word thus unwittingly crept into the title, and the word “*given*” into the first marginal abstract, the Bill itself stood clear from what all who feel the spirit of our Institutions would regret to find in it. The Preamble expressly states that “*by Law and Custom*” Vestries may now take the steps which, simply in order that doubts and difficulties may be removed, the Bill proposed explicitly to declare.

The importance of the practical objects of such a Bill, and the simplicity, but completeness, of its provisions, make it due to the present subject that the record of it should be preserved in these pages. The perusal of it will make the whole subject of this chapter better understood.† This Bill will be seen to em-

^{*} The title was altered after the Bill was drawn and printed. As I am entirely responsible for the Bill itself, it is necessary thus to disavow responsibility for this alteration in the title.

† A Bill for declaring the power of Parish Vestries in England and Wales, to carry into effect objects for the Common Good.

Whereas it is desirable that the power and authority of Parish Vestries to accomplish (as by law and custom they may do) purposes and works for promoting the local improvement of their respective Parishes, and the common welfare of the inhabitants, should be freed from all doubt and difficulty: Be it therefore declared and enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and

body the simple recognition of the efficient action of the ancient and no less useful system of Committees, under the proper check of those immediately concerned. All is responsible. There is no possibility, under this Bill, of either unlimited, extravagant, or irresponsible taxation, or of any taxation at all without the express previous assent of the Vestry ; while every inducement

Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. When, at any Vestry of any Parish in England or Wales, summoned according to law, a Committee shall have been appointed, by the majority of those present at such Vestry, to carry out any special purpose or works which such Vestry shall judge to be for the common good of the Parish, of the intended proposal for the appointment of which Committee notice shall have been given in the summons calling such Vestry, such Committee shall be held to be, and shall be, a Body Corporate for carrying out the special objects of its appointment, subject to such rules as to servants, officers, and otherwise, and as to its own continuance, and the election or re-election of members, and otherwise, as the Vestry shall then or at any future meeting appoint ; and such Committee may, with the consent of any Vestry held after like notice as aforesaid, make, assess, and levy a rate or rates on the inhabitants of the said Parish, or of some specified part thereof, in order to carry out the purposes of its appointment.

II. On the requisition of any five inhabitants, where the population of the Parish is less than one thousand, and of ten inhabitants where the population exceeds one thousand, the Churchwardens of any Parish are required to summon a Vestry in due form of law, within ten days after any such requisition shall have been left with or at the place of occupation within the Parish of either of such Churchwardens ; and the purpose and intention stated in such requisition shall be fully stated in the notices calling such Vestry.

III. Every such Committee shall meet at such times and places as shall be authorized by the Vestry at the time of its appointment, or at any future Vestry ; and all meetings thereof shall be summoned by the Vestry clerk, or other person appointed or approved by the Vestry for that purpose ; and Minutes shall be kept of the proceedings of every meeting of such Committee, which shall always be produced and open to public inspection at every future Vestry, so long as such Committee remains in operation, and afterwards shall be deposited and kept in the Parish chest, together with the Vestry minute books.

IV. An exact account shall be kept of all the receipts and expenditure of every such Committee, which shall be laid before the Vestry twice every year at the least, and shall be audited by auditors appointed by the Vestry ; and the Vestry may order an abstract thereof, and of the proceedings of the Committee, to be printed and distributed through the Parish ; the expense whereof, and any other expenses incurred by any such Committee in the discharge of the duties committed to it, shall be paid out of any Parish Moneys or Rate which the Vestry may think fit to charge with the same.

V. All the powers which, by any Act now existing or hereafter to be made, for the removal of nuisances or prevention of diseases, or for any other objects of the like nature, may be lodged in or given to any local Body or Bodies in

and opportunity are present for watching the responsible action of those chosen to carry out any object. Section 5 became necessary, in consequence of the fact that the scope intended to be given to the *Nuisances' Removal Act* of 1848 by its authors, had been attempted to be narrowed by the Board of Health, for centralizing purposes. Hence the application of that Act had been found impracticable and useless in most places, while it was cumbersome and inconvenient in all. This section simply restores the constitutional and obviously sound mode of dealing with such matters. The object of the section has since been, to a great extent, embodied in the "*Nuisances' Removal Act, 1855.*"*

All who value the principles of Local Self-Government, or would help practical progress, or would remove the causes of that remissness in Local Action which (though produced by their own unconstitutional intermeddling†) the friends of Centralization are always proclaiming as ground for the demand of increased controlling power, should do what in them lies to give practical action, within their local districts, to the machinery which this Bill enunciates. They should endeavour to prevent the raising of any obstructive doubts as to the carrying out of what the Public Welfare in any parish needs, both by practical example and action, in accordance with the machinery thus suggested, and by using what means they can to procure the early passing of such a declaratory Bill into an Act. It was, of course, foreseen that this Bill would be strenuously opposed by

any such act named, shall be fully and completely vested in any Committee that may be appointed for that purpose by any Vestry; and such Committee may issue summonses, orders, and otherwise, and do all other matters and things in the same manner as any justice or justices of the peace are empowered by any such Act to do, and shall have all the same powers as to any nuisances that any Court Leet would have; and all the orders and otherwise of any such Committee may be executed by any officer who may, with the approval of the Vestry, be appointed by such Committee for that purpose.

VI. Any Parish may be divided into districts, by or under the orders, and subject to the approval, of a Vestry of such Parish, held, after due notice as aforesaid, for the purpose of carrying out, or appointing any Committee to carry out, in any part of such Parish, or separately in separate parts thereof, any of the purposes or works for which a Committee or Committees may, under this Act, be appointed for the whole Parish.

* See the evidence given by me before the Select Committee of the House of Commons upon that Bill; in consequence of which it was that the Bill was altered so as to embody the practical clauses as to Local action in Parishes.

† See Sec. 15 of the foregoing Chapter.

the whole legion of bureaucrats and functionaries, and it was not for a moment supposed that it would be then allowed to pass into an Act. But the introduction of such a Bill itself constitutes an era in legislation. It is the first formal protest in favour of Constitutional Principle, as opposed to the modern encroachments of centralization, and to the system of Empirical Legislation, that has appeared on the records of Parliament. It needs only that it should be known and understood, for it to ensure the support of every one who respects and would maintain the free institutions of England.

It will be satisfactory to every one who respects those Institutions, and the solid grounds of true freedom, to know that the only way in which it was felt that this Bill could be met, was by deliberate mis-statement. The Constitutional grounds and the Common Law Principles and Practice on which the Bill rests, as a declaratory measure, were not ventured to be touched. They remain impregnable. The attempt, while these were untouched, to raise prejudice by deliberate mis-statement,—which was the course adopted,—is the highest tribute that could be paid to the soundness of this Bill, both in principle and in detail, and to the value of Constitutional Principles as the safest and surest foundation on which to rest the maintenance and assertion of our free Institutions.

This Bill, it must be remembered, *sought nothing new*. It asked *no grant of new and unknown powers*. It sought, inasmuch as late empirical and ever-varying legislation has given constant opportunity for pretended doubts, that the Common Law should be re-declared, and so local improvement not be obstructed. We have had vastly too much of “experimental legislation.” It is legislation of this simple kind that the country needs.

The official opponent of this Bill showed himself not only ignorant of, or resolved to treat with contempt, Common Law and constitutional principle, but even ignorant who those are that attend and have votes at Vestries. He insulted the common sense of his hearers and the public by talking of this Bill giving powers to “Paupers,” and by ridiculing the idea of Vestry-appointed Bodies having a corporate capacity. Though Under-Secretary of State, each of these allusions prove him to have been altogether unaware of the existence, or ignorant of the provisions, of the Highway Act, the Lighting and Watch-

ing Act, Gilbert's Poor Law Act, Hobhouse's Act, the Baths and Wash-houses Act, the Burial Acts, and many others,* as well as even of the simplest rules of Law as to Churchwardens. Either this, or he deliberately misled the House of Commons. There is no third alternative. All the facts contained in the present chapter stand, in either case, as a complete answer to the untrue pretences thus set up. He fain attempted, moreover, to represent that a committee appointed to do a specific work only, subject to rules to be laid down by Vestry, and which Committee cannot raise or spend a penny without the express consent of the Vestry, has arbitrary powers! Let any Body of irresponsible Functionaries arbitrarily order, intermeddle, or tax:—the Government official does but burn with zeal to enlarge their powers. But for any parish to think of doing anything for itself, and of itself paying for it as it thinks right:—this, indeed, is not to be endured!

It is by shallow misrepresentation, puerile sophism, and an unconstitutional tone and spirit such as this, accompanied by the offensive pertness of officialism and the impertinent flippancy of red-tapism, that attempts to promote the public welfare are met in our time, and that the debasing system of Centralization seeks to extend its influence,—and succeeds in the attempt.

The Common Law of England looks at and deals with all men as actuated by motives, and as best educatable by calling those motives into action—by throwing upon the men of every neighbourhood the unevadible responsibility of that action. It therefore continually appeals to motives, and calls them into play. This is the fundamental principle of free government. Its atmosphere and constant rule are, confidence in the people, and in the well working of the Institutions of the Country by means of the people themselves. The modern system of Legislation goes upon an entirely different principle. Its whole principle is oligarchic. Mistrust of the people, and contempt for the spirit and practice of our most fundamental Institutions, are the guiding rules. These now pervade every measure in-

* It is worthy of notice that even a corporate name is not always necessary to give a corporate character; still less is the having a seal (as sometimes supposed). If a Body has,—like, for instance, a Highway Board,—power to *hold land in succession*, it is, practically and in the eye of the Law, a Corporation. See *Tone Conservators v. Ash*, 10 B. and C. 349.

troduced, colour every argument, and mark every suggestion. Everything of a different tendency, everything that is practical and sound, has to be fought for ; and it is only to be won with a hard struggle, and after encountering every hostile manœuvre that the insolence of officialism and the eager self-seeking of unprincipled functionarism can bring to bear against it. Our *liberal* governments and legislators would have us believe how much they love the people ; but then, *they* must do and permit, and order and “inspect,” everything. There was a time when it was declared in Parliament that the opinion of several was more to be trusted than that of one man ; and when it was the invariable rule, that the truth of every matter must be inquired of by men of the neighbourhood, “by whom the truth will be the better known.” We live in more enlightened times ;—when any idea of the people being trusted to manage or discuss any of their own affairs for themselves, is worthy only of a sneer of incredulous contempt. Enterprise, effort, opportunity, and motive, are to be forbidden. All must be done blindly, according to the rule of bureaucratic dictation. It was, then, certain that such a Bill as the preceding, which simply re-declares the Common Law principles and practice, would be opposed with nervous dread. Such a Bill, resting on the Common Law, and on long tried practice, would ensure, at the same time, thorough responsibility and the only efficient means of local improvement.

Every lover of sound government, and of the tried free Institutions of his country, will, therefore, rejoice that the introduction of this Bill stands recorded on the Journals of the House ; remembering the remark made by a great patriot and lawyer, more than two hundred years ago, that—“It is an observation proved by a great number of precedents, that never any good Bill was preferred, or good motion made in Parliament, whereof any memorial was made in the Journal Book, or otherwise,—though sometimes it succeeded not at the first, yet hath it never died, but, at one time or other, hath taken effect : which may be a great encouragement to worthy and industrious attempts.”*

* Coke, 4th Inst. p. 32.

CHAPTER V.

PARISH CHARITIES ; AND TRUSTEES OF PARISH PROPERTY.

THE need there is that every question which affects any right, obligation, or function of the citizens of a free State, should be dealt with on grounds of principle, instead of on those of narrow technicality or groping literalness, can never be too often repeated. The inattention to this has led to numerous and wide-spread evils. Nowhere has this been more strikingly illustrated than in regard to the management of Parish Charities. A decision of the Courts of Law, more than three hundred and fifty years ago, which went, then, upon a mere technical ground (and which, even if applicable then, has become wholly inapplicable since), has been the direct source of all those mischiefs and mal-administrations which have led to so much complaint as to the misappropriation, waste, and even loss, of parochial charitable funds.

The case is a very simple one, when divested of technicality.

In every parish in England there exist Churchwardens ; who are annually elected by the parishioners ; who are acknowledged by the law as the legal representatives, in a corporate character, of the parish ; who are, in that character, the holders of parish property ; who are responsible to the periodical public meetings in vestry of the parish, for their proceedings and accounts ; and who can do no act, in relation to any property of the parish, without the previous cognizance, deliberation, and assent of the vestry of the parish.* Owing, however, to a purely artificial and technical rule, laid down by the above-named decision, and adhered to, under changed circumstances, merely from the blind following of *precedent*—without regard to the principle involved in such precedent†—it is held that the legal ownership,—or, as it is called, the “legal estate”—in such of the cha-

* Before, pp. 99–101.

† See before, p. 195.

ritable foundations attached to Parishes as consist in land and houses, and the power of suing and being sued in respect thereof, are not to be deemed as vested in the churchwardens. Hence it is that the habit has grown up of appointing Trustees for maintaining this legal estate ; who, however, when once appointed and having the legal estate vested in them, cannot be removed except by what is, and must always remain, an invidious and risky process. Though the real position of such trustees of course is, and ought always to be felt and insisted upon as, that of bare trustees for maintaining the legal estate in the original gift or “foundation,” for the benefit of the parish, they become thus enabled to obstruct and thwart the action of those public bodies to whom the property, and the direction of the administration of its proceeds, actually and of right belong ; and it has often happened, and now too often happens, that, wrongfully availing themselves of this opportunity, they take upon themselves, in violation of every duty and principle, to assume an independent and practically irresponsible position. Hence have arisen almost all, if not all, the instances of perversion, waste, or non-improvement of parish charities.

The source of this cumulative and justly complained of evil as to parish endowments and charities, clearly lies in the legal rule which has been above styled “purely artificial and technical.” That this rule is thus purely artificial and technical, founded upon no real principle, but in reality opposed alike to principle and common reason, is an inevitable deduction from the fact that it is expressly declared, even in the judgment in that which forms the leading case on this subject, and which was adjudged upon in the 12th year of King Henry VII.,* that “by common reason” the parishioners are a corporation to certain intents. It was then admitted, and has been admitted ever since, as well as long before, that the churchwardens may, and must, *ex officio*, sue and be sued, as a corporation, in respect of all other parish properties, on behalf of the parishioners.

The reason itself assigned for the rule above alluded to, is a trivial and inconsistent one ; which, if sound as to any kind of property, must be sound as to all ; which would, indeed, be far more applicable to goods and chattels, and other personal property, which can be readily made away with,—but in respect to

* Year Books, 12 Hen. VII. fo. 28 ; and see *ib.* 13 Hen. VII. fo. 9 & 10.

which it is unquestioned, and admitted in the very case alluded to, that the churchwardens are a corporation to sue and be sued,—than it can be to lands or houses, which can never be carried off. This reason is, in fact, particularly applicable, if at all, to the frequent case of failure of trustees. The reason thus assigned is, that, if the estate in lands were deemed to be vested in the churchwardens, the use would be in abeyance at the time of the election of new churchwardens. The extraordinary triviality and unsoundness of such a reason, and of the whole origin and application of the technical rule above alluded to, become strikingly obvious, and its inconsistency manifest, when it is remembered that the parson of a parish is deemed to be a corporation for holding houses and lands, (namely, the parsonage, glebe, etc.) although there is, necessarily, a frequent vacancy in the person embodying that corporation, and so, invariably on the death or change of the incumbency, an actual abeyance in the estate: while, in point of fact, no such vacancy does ever now exist in the case of Churchwardens;* so that, if the above rule ever had any soundness, it has none now. “The law,” says Lord Coke, speaking of the corporate character of the Parson, “had an excellent end therein, viz. that in his person the church might sue for and defend her right; and also be sued by any that had an elder and better right.”† The corporate character of the Churchwardens exists for precisely a similar end in regard to the State, as represented by that integral part of it—the Parish: and it is an extraordinary inconsistency and anomaly that any doubt, still more any judicial opinion, should ever have been expressed on so simple a point. The parish never does cease: the parishioners, for whom and on whose behalf only the Churchwardens can sue and be sued on any matters,‡ never are without continuance. Yet, although the highest authorities in fact admit that the fee-simple in an estate can be in abeyance from time to time, and specifically avow that, in the case of the glebe, etc., it actually is so,§ we are asked to take it for good Law that the churchwardens are not a corporation for holding land—as mere *representatives* of the Parish—

* See before, p. 90.

† Coke upon Littleton, p. 300.

‡ It has been already remarked that, in all actions by churchwardens, the damage and injury must be stated “*ad damnum parochianorum*.” See before, p. 101, and particularly, also, p. 78.

§ Coke upon Littleton, p. 341.

because if so, the fee would be sometimes in abeyance. And this, be it observed, is the only, however inconsistent and self-contradictory, ground stated for a decision which has been the foundation of endless mischiefs.

Though this anomalous rule was thus pronounced, the practice had already grown up, and was continued.* Thus it is that practice is often sounder than technicalism. But this artificial rule has, notwithstanding, produced a great deal of mischief; inasmuch as it has always enabled any unprincipled person to take advantage of the tendency of the Courts to adhere to precedent, however unsound. The rule was indeed so artificial and unmeaning that Parishes were not, and many are still not, diverted from considering and dealing with whatever estates they enjoy, as vested in the Churchwardens for the time being. An examination of the minutes of Vestry, of most Parishes, will show that the Parish, in Vestry, have always made, and do in fact make, leases; and that the rents of Parish estates, and the outgoings in respect to them, have been, as they rightly ought to be, entered regularly into the churchwardens' accounts; and that it was but rarely, until a comparatively late period, that "Trustees" were appointed.†

The triviality and unsoundness, indeed, of the technical rule and distinction above alluded to, have been thoroughly admitted both by the Courts of Law and by Parliament; though, with singular inconsistency, the technical rule founded on the above precedent has, notwithstanding, been clung to, and allowed to influence the course of proceedings. It is clear that, if such a rule were substantial and sound, it must, from its very nature, be universal and imperative. But the Courts of law have always recognized a custom in the parishes within the city of London, and some elsewhere, for the vesting of parish estates in the Churchwardens for the time being. Parliament, on the other hand, after some much earlier partial declarative

* See an example in Kennett, p. 562. There can hardly be a Parish in England which does not supply similar examples. Nor is it unworthy of significant notice, that the old articles of Visitation imply it as a duty of Churchwardens to give heed to the right appropriation of all Parish Charities. See Articles of Cranmer and Ridley in Sparrow, pp. 31, 37:

† See extracts from minutes hereafter, Chap. VII. Sec. 12. And, though cases to the contrary are frequently cited, it is within my knowledge that the Court of Chancery has confirmed, and enforced the performance of, Leases so made.

enactments, at length unreservedly declared, and expressly enacted, that “ALL *buildings, lands, and hereditaments, belonging to any parish,*” may and *shall* be held by the Churchwardens and Overseers for the time, and their successors, “*in the nature of a body corporate, and on behalf of the parish.*”*

This enactment was intended to mean what it says, and to apply to every case whatever. Ingenuity has, however, been applied to the frustration of this excellent intention. Lord Tenterden felt the full necessity for the operation of the Statute. In a case which ought to be the guide in every instance, he dwelt on the mischief that so often follows from failure of trustees, and on the consequent clear application of the Act to every case, without exception. “Property vested in trustees for the benefit of the Parish,” says he, “seems equally within the mischief contemplated by the Legislature, as well as property not so vested;” and therefore, dismissing the distinctions attempted to be set up as to the foundations or charitable endowments to which the Act extends, he expressly adds, that he “can see no reason to doubt that the operation of the Act was intended to be co-extensive with the mischief.”†

This Act absolutely *vests* all the property in the Churchwardens and overseers.‡ But it has been held, since the above sound judgment of Lord Tenterden, that property originally appointed to trustees upon specific trusts, will not come within

* 59 Geo. III. c. 12, s. 17. This is by no means the only Act recognizing the same thing. See 43 Eliz. c. 2, s. 5; 9 Geo. I. c. 7, s. 4; by which the Churchwardens and Overseers may build dwellings for the poor:—1 & 2 Wm. IV. c. 42; 1 & 2 Wm. IV. c. 59; by which ground may be enclosed, either of waste or of crown land, for the benefit of the poor:—and 2 Wm. IV. c. 42; by which land may be let out to the poor in allotments. The last of these Acts is deserving of particular attention, in reference to the subject of the present Chapter.

† *Doe v. Hiley*, 10 Barnewall and Cresswell, p. 885.

‡ It is desirable to give the entire words of this part of the section in question. After alluding to buildings and land to be purchased for purposes specified, which are to vest in the churchwardens and overseers “and their successors, in trust for the Parish,” the section continues:—“And such churchwardens and overseers of the poor, and their successors, *shall* and may, and they are hereby empowered to, *accept, take, and hold*, in the nature of a Body corporate, *for and on behalf of the parish*, all such buildings, lands, and hereditaments, *and also all OTHER buildings, lands, and hereditaments belonging to such parish*; and in all actions, suits, indictments, and other proceedings for, or in relation to, any *such* buildings, lands, or hereditaments, or the rent thereof, or for or in relation to *any OTHER* buildings, lands, or here-

the terms of the Act, though the use of it be limited to the parish. Such decisions involve a logical inconsistency. The Act declares that *all* buildings, lands, etc., *belonging* to the Parish, shall be vested in this corporation. Either, therefore, buildings, lands, etc., could “belong to the parish” before the Act passed, without the necessity for trustees,—and so the mischief which the Act was passed to remedy did not exist; or the Act applies to all cases in which trustees exist, and as much to one sort of land, buildings, etc., and to one kind of foundation, as to another. This is a dilemma that cannot be logically avoided. Either way, the decisions by which—though inconsistent with each other—it has been attempted to narrow and limit the application of the Act, cannot be maintained, if Principle, the plain intention of the Act, and plain logic, are to be regarded in the administration of the Law.*

ditaments belonging to such parish, or the rent thereof, it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and no action, etc., shall abate, etc., by the death of the churchwardens, etc., or the expiration of their respective offices.” 59 Geo. III. c. 12, s. 17.

* The cases of *Alderman v. Neate*, 4 M. & W. 704; *Doe v. Terry*, 4 A. & E. 274; *Doe v. Cockell*, 4 A. & E. 478; *ex parte Annesley*, 2 Young & Collier, 350; *Rumball v. Munt*, 8 Q. B. 382; may be compared with *Doe v. Hiley*, as above, in reference to the effect of the Act in “taking the estate out of feoffees, and vesting it in the Churchwardens and Overseers.” See *Doe v. Webster*, 12 A. & E. 442, that the legal estate of even such as come within 5 & 6 Wm. IV. c. 69, is not divested out of the Churchwardens and Overseers by that Act or 4 & 5 Wm. IV. c. 76: *Cantrell v. Windsor Union*, 4 B. N. C. 348, as to what cottages are Workhouses within these Acts; *Woodcock v. Gibson*, 4 B. & C. 462; *Phillips v. Pearce*, 5 B. & C. 433; *Smith v. Adkins*, 8 M. & W. 362; *Doe v. Mace*, 3 Jurist, 628; *Uthwatt v. Elkins*, 13 M. & W. 772; *Doe v. Gower*, 21 L. J., Q. B. 57; that the corporation must consist of both Churchwardens and Overseers, and of all of them, but only of them. In *Allason v. Stark*, 9 A. & E. 255; *Deptford v. Sketchly*, 8 Q. B. 394; it was held that, where there are known trustees, and the funds are applicable to certain specific objects only, the estate of the trustees is not divested by the Act:—in *Attorney-General v. Lewin*, 8 Simons, 366, that the Act does not apply where there are other purposes than the poor and church:—in the same case, and in *Doe v. Foster*, 3 C. B. 215, and *in re Paddington Charities*, 8 Simons, 629, that it does not extend to copyholds, or to freeholds on special trusts. The case of *Deptford v. Sketchly*, 8 Q. B. 394, is directly contrary to that of *Rumball v. Munt*, 8 Q. B. 382; though each of the judges expressed himself in an unusually decided manner in the latter case,—which also agrees with the obvious intention of the Act; with the decision in *Doe v. Hiley* and the rest, as above; and with the public interests. Such an instance of a capricious over-riding of the Law

In the numerous cases, however, to which it is not pretended to be questioned that the Act applies, the Churchwardens and Overseers have every facility for recovery of the rents, and of the property if wrongfully held.*

The actual result of the inconsistencies in decisions thus noticed, is a compound mischief. In the first place, through the unsound technical rule of law above named, it gradually happened that many persons got into the course, when they wished to leave property to a parish, of appointing Trustees to hold it, because told that the Parish officers could not hold it. And this led them to create special trusts, in order to keep those trustees from misapplication. In the same way, special trustees have often been appointed by Parish Vestries themselves.† In the second place, the Act, passed to remedy the anomaly and inconveniences springing from this unsound technical rule, has, in many of the cases to which it applies, been made, by a narrow construction, to remain abortive.‡ Hence trustees, though

by an individual decision, like some others given in this Volume (see pp. 58, 62, 193, 195, 294, 319–324, &c.) cannot tend to raise the confidence and respect so necessary to be had in and for the certainty and the administration of the Law. But see before, p. 13.

* See before, pp. 100, 153, also *Doe v. Barnes*, 8 Q. B. 1037, that proof of acting is enough. They must sue and proceed in their own names, but stating it to be *as a corporation*. *Doe v. Roe*, 4 Dowl. 222 ; *Ward v. Clarke*, 12 M. & W. 747. Any *one* of them may authorize a distress, see *Gouldsworth v. Knight*, 11 M. & W. 337, and *Ganvill v. Utting*, 9 Jurist, 1081 ; with which compare *Doe v. Benham*, 7 Q. B. 976. As to recovering possession of premises, see 59 Geo. III. c. 12, ss. 24 and 25 ; *Wildbore v. Rainford*, 8 B. & C. 4 ; *R. v. Middlesex*, 7 Dowl. 767 ; *R. v. Bolton*, 1 Q. B. 66.

† This is often done by direction of the Will of the founder of the Charity : but the right of appointing trustees rests, apart from any such direction, with the Vestry, and not with the previous trustees, or any others. See *Attorney-General v. Dalton*, 13 Beavan, 141.

‡ This matter affords a curious and interesting illustration of the contradiction, confusion, and uncertainty, in which the administration of the Law becomes inevitably entangled when *Principle* is lost sight of. Lord Tenterden, as quoted above, well stated the mischief which the Act was intended to remedy, and the principle that was therefore to be the guide. Later decisions, losing all sight of this principle, have attempted to override the Statute, by confining it to cases of poor-rates and church-rates. For this limitation there is not the slightest pretence, on any ground whatever. Nay, both of these cases might have been *excluded* with far greater reason than others. It has already been shown (see before, pp. 47–50) that Lord Coke, and all the highest authorities, reckon Highways, Sewers, or any other thing that is for the general well-being, as being strictly *Parish* affairs. Poor-rates were then unknown : Church-rates were only tolerated because esteemed to come

only appointed in order to meet an anomaly in the Law, and only able to continue through an empirical construction of a Statute passed to remedy that anomaly, often attempt, and unless jealously watched succeed in the attempt, to arrogate an independent authority. They are enabled to do this through the circumstance that their appointment is not annual, like that of other officers. They exist solely as the conduits through and by means of which the technical legal title shall be kept up. The contrivance is an exceedingly clumsy one;—one far more liable indeed to the very accident which it is pretended to be contrived for preventing, than is the simpler course which it is substituted for. Trustees have no pretence of being endowed with a corporate continuance, as Churchwardens unquestionably are. There are, therefore, obliged to be, from time to time, *but irregularly*, fresh appointments. Nothing can be more liable to oversight, accident, and consequent irremediable mischief. The greatest mischief, is the tendency of a set of Trustees to become like the old select Vestries; and, once appointed, to make themselves perpetual, and attempt to appoint their successors. No Parish will, however, fulfil its duty, unless it adopts a system which shall effectually check this; unless it requires a regular, and frequent, account and audit; and insists on itself having, in vestry assembled, not only the appointment of all trustees, but the actual direction and control of the property, though the trustees remain as the means for maintaining the legal estate. Churchwardens can deal with no property except with consent of the Vestry. These Trustees are merely in place of the Churchwardens for a special purpose, owing originally to a technical rule, and, where still existing, to the misapplication of the remedial Statute.* They have not, themselves, any property whatever in the lands, etc., any more than

within the analogy. Yet late decisions would (clearly *against Law*) hold all those truly Parish affairs to be only *special*! But again, what does “for the Poor” mean? It has been soundly held that building a school, and educating boys, are within the terms of trusts “for relief of the poor” (*Wilkinson v. Malin*, 2 C. & J. 636). Is, then, a gift for such an object, by name, to be held as within the Act or not? According to this decision, and upon every ground of Principle, it is plainly within it. But the empirical cases named before would contradict this. See *note* on p. 271.

* It is noteworthy that it is admitted in the case of *Deptford v. Sketchly* (see before, p. 271, *note*) that the Act applies and the estate vests, *ipso facto*, on the failure of trustees, even where it does not otherwise vest at once, according to that case, under the Act.

churchwardens have in the goods to which the technical title is in the latter.* As these Trustees are not annually re-appointed, 't the more behoves every Parish to see that the responsibility that is required of Churchwardens is required of all trustees; who can certainly have no prerogatives higher than those enjoy, in whose shoes they stand on the special matter. Such Trustees are, in fact, in the nature of Special Committees, and are bound to account to the Parish in the same way as Churchwardens are.

It has already been shown how all the Statutes which suggestively recognize the system of Parish Committees, recognize, at the same time, the primary necessity and duty of responsibility to the Parish. The Act of 59 Geo. III. c. 12, expressly and reiteratedly enforces the responsibility of the churchwardens and overseers to the vestry of the parish, in respect to all their dealings as to that property the vesting of which in them "in the nature of a corporation" is, by that Statute, particularly enacted; while it has been already fully shown that the same responsibility is expressly and most strongly recognized in the very decisions in which, though the technical rule above alluded to is laid down, the corporate character of the Churchwardens, as holders of other parish properties, is stated in the clearest terms. A precisely similar responsibility must, as a matter of course, all the more attach to trustees who are only called into existence in consequence of the operation of that rule.

The Act of 59 Geo. III. c. 12, is directed to property consisting of lands, buildings, and hereditaments. It has been already seen that even the cases which, by a very illogical induction, declared that Churchwardens could not hold these, yet affirm that they can and do hold all other property, as a corporation on behalf of the Parish, and under the obligation to give account to the Parish.† It has unfortunately, but naturally, happened that the refined distinctions set up by those

"Who would distinguish and divide
A hair twixt south and south-west side ;"

and who would make out that a higher capacity is needed for holding a House in safety, than for holding all manner of treasures in plate, money, or other goods and property, in safety; have not been comprehended by the minds of plain honest men,

* See Lord Macclesfield, before, p. 78.

† Before, pp. 99-102.

who have desired to do good to their neighbours. The latter have often fancied that, if trustees are necessary in one case, they must be so in the other. Hence it happens, that there exist Trustees for many Charities which do not consist of either land, buildings, or hereditaments. What is said above as to Trustees, applies equally to all, whatever be the nature of the property they hold in trust.

Care has often been shown by the Legislature to secure the right application of Parish Charities. Thus the 43 Eliz. c. 4, requires special inquiries to be made, in a full and satisfactory manner, as to such Charities and foundations.* These inquiries are to be made, not on any bureaucratic system, but by a regular jury, and in the presence of not less than four Commissioners appointed by the Lord Chancellor. After full inquiry has been thus made as to the facts, orders are to be made by the Commissioners, if needed, the better to enable the objects of the donors to be carried out.

The course thus pointed out is thoroughly sufficient for every right purpose. It needs only to be duly put in action ; in regard to which it has been the Lord Chancellors, and not those interested in Charities, who have been remiss.

An Act of a few years' later date, addressed itself particularly to the application of foundations given for apprentice fees. Foundations of this sort exist in most parishes ; and, rightly administered, are of great value to the interests of the Parish and the Public. This Act declared that the special

* The following recital, from this Act, shows the extent and nature of the Charities and Foundations for which England has always been remarkable ; and which were, even then, thus common. "Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, have been heretofore given, limited, appointed, and assigned, as well by the Queen's most excellent Majesty, and her most noble progenitors as by sundry other well disposed persons ; some for relief of aged, impotent, and poor people ; some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities ; some for repair of bridges, ports, havens, causeys, churches, sea-banks and highways ; some for education and preferment of orphans ; some for or towards relief, stock or maintenance for houses of correction ; some for marriages of poor maids ; some for supportation, aid, and help of young tradesmen, handy-craftsmen, and persons decayed ; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants, concerning payment of fifteenths, setting out of soldiers, and other taxes." The list of objects thus contained, ought alone to have prevented the narrow and illogical construction of 59 Geo. III. c. 12, noticed above, pp. 270-272, and *notes*.

management of all such funds, if no directions as to their management were given by the founders, should be vested in a Committee, consisting of the Parish Officers together with the Parson. This enactment is, in fact, another and very interesting example of the Committee practice illustrated in the last chapter. Its provisions are well worthy of attentive consideration. The Act shows that apprentice fees were then not absolutely given, and so sunk, as is now the case: but that a wiser course was adopted; which had the double effect, of keeping a direct hold upon the master during the whole term of the apprentice's service, so as to ensure the well teaching and treating of the latter; and also of maintaining the original funds unimpaired. The apprentice fee was in fact a *loan* from the Parish to the master, free of interest, for the term of the apprenticeship. He was bound, in his own bond and with sureties, to repay it at the end of that time, or on the earlier death of the apprentice.*

This Act expressly contemplates the apprenticing of both boys and girls;—a practical application of apprentice foundations which is too often forgotten.†

* For another example of the system of Loans out of Parish Stock, see *Appendix*.

† The Act in question, 7 Jac. I. c. 3, is so important a one that I quote the recital and enacting part of the first section. “Forasmuch as the true labour and exercise of husbandry, and the bringing up of apprentices of *both sexes* in trades and manual occupations, are things very profitable in the commonwealth, and acceptable and pleasing unto Almighty God; there being already great sums of money freely given, and more in time to come like to be given, by divers well disposed persons, unto the corporations of divers cities, boroughs, towns corporate, and unto divers persons in sundry towns not corporate and parishes within this realm of England, to be continually employed in the binding out as apprentices of a great number of the poorest sorts of children unto needful trades and occupations; the experience whereof hath brought forth very great profit and commodity unto those cities, towns, and parishes where any parts of the said moneys have been so given and employed, and so no doubt there will consequently ensue thereof the exceeding good of the commonwealth in general: And for that most part of the poorer sorts of children would, as heretofore, without such good care and assistance, be brought up in idleness and disordered kinds of life, to their utter overthrow, and to the great prejudice of the whole commonwealth; And for that it is very likely that many other well disposed people will be the better encouraged willingly to follow the like good example, in bestowing also good sums of moneys to the same good and godly purposes, if it might be so provided that such moneys as have been already so freely given, or as hereafter shall be given for the binding out of such poor children apprentices

When, more lately, in consequence of the neglect of the Lord Chancellors to fulfil the powers entrusted to them by the Act of Elizabeth, and of the opportunity thus long given for the inherent mischiefs of the Trustee system to develope themselves, a case was able to be got up showing that some charities had become abused, the occasion was seized, not for the application of a simple and efficient remedy, but only for extending the bureaucratic system.

In 1853 an Act was passed, which professed to be “for the better administration of Charitable Trusts.”* It does not however, so far as Parish Charities go, in the least degree deserve that title. Instead of there being any care to grapple, in a constitutional and efficient manner, with whatever evils

may continually hereafter remain, and be wholly employed accordingly :—Be it therefore enacted &c., That all sums of money, so freely given at any time within three years last past, or hereafter to be given by any person or persons, to be continually employed for the binding out of apprentices as aforesaid, shall for ever from henceforth continue and be from time to time used and employed to such uses intents and purposes only, and by such persons and in such manner and form as shall be hereafter by this present Act specified and declared,—except the same have been or shall be otherwise ordered or disposed by the givers thereof: That is to say;—That all Corporations of all cities, boroughs, and towns corporate, by what name or names soever they shall be known or incorporated; and, in towns or parishes not incorporate, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers for the poor for the time being, or the most part of them, where any such sum or sums of money are already given or shall be hereafter given to be so employed; shall, from time to time, within the said several cities, boroughs, towns and parishes respectively, have the nomination and placing of such apprentices, and the guiding and employment of all such moneys as have been heretofore so given, or which hereafter shall be given, to and for the continual binding forth of such and so many apprentices, and in such sort, as is already or shall hereafter be so given and appointed, either by the last will and testament or by any writing or writings under the hands and seals of any person or persons which hath already or hereafter shall so give any sum or sums of moneys unto the good and godly purposes and intents aforesaid.”

Attention may be here properly called to the Acts 3 & 4 Vict. c. 77, and 4 & 5 Vict. c. 38; which are intended to increase the usefulness of existing foundations for Grammar and other schools, and to give additional facilities for erecting such foundations. The corporate character of the Minister, Churchwardens, and Overseers, is here again recognized.

Nor, in reference to Acts affecting parish property, should the 19 & 20 Vict. c. 50, for facilitating the sale of Advowsons belonging to Parishes, be lost sight of.—As to the Safety of Parish Libraries, see 7 Anne, c. 14.

* 16 & 17 Vict. c. 137; which was “amended” by 18 & 19 Vict. c. 124.

have arisen, the opportunity of the existence of those evils is merely taken as an excuse for calling into existence another Body of irresponsible functionaries, with an apparatus of peripatetic Inspectors,—an addition to the patronage of the Minister of the day and to the hosts of functionarism.

No distinction is drawn, in this Act, between the different existing classes of Charitable Trusts; nor is the source of the evil, whence all mal-administration and malversations of Parish Charities have arisen, even approached. The clumsy and mischievous system of Trustees of such Charities is left untouched. It is even, in some respects, aggravated in its mischiefs, both actual and contingent.

This Act embraces all foundations that are included within the words or interpretation of the Act of the 43rd year of Queen Elizabeth, c. 4.* But the provisions of the last-named Act are such that all charitable foundations, of whatever kind, might be properly included within it; while the provisions of the present Act are entirely different from those in character, and, in many respects, antagonistic to them in principle; and are applicable, therefore, to a much less wide range of cases.

The charitable foundations in England and Wales may be divided into two classes,—marked by broad characteristic distinctions. The one class embraces foundations which, though endowed for special purposes, are more or less general in their beneficiary objects, and are not identified with any of those territorial divisions which are recognized by law. The other are foundations which, while often special but sometimes general in their purposes, are always special in their beneficiary objects, being identified with recognized municipal divisions, such as, and being for the most part, Parishes.

From the characteristic distinctions thus named, follows this other, and, in reference to the Act in question, most important

* The Act of Elizabeth, already quoted, empowers the Lord Chancellor to cause inquiry to be made as to the abuse of any charity, “by the oaths of twelve lawful men, or more, of the county;” and the right of challenging these, like any other jury, is expressly reserved to the parties who may be affected. There is a great difference between this sound method, and its probability of getting at true and unbiassed results, and the hurried visit of an official and unchallengeable “Inspector;”—who is irresponsible to those concerned, and who comes to the task indoctrinated, and having it as his work to indoctrinate others, with the views and crotchets of those on whom his place and salary depend.

one;—that the administration of the former class is, of necessity, in the hands of Trustees or Governors practically independent and irresponsible; while the administration of the latter class is, or always ought to be, responsible to the constitutionally recognized Bodies identified with each place.

The sound mode of dealing with these two classes would seem therefore to be, to let there be some public Body which shall be recognized as one to which the former class shall, on behalf of the public, be continually and truly responsible; but, as to the latter class, to secure that the responsibility which does or ought to exist to already constitutionally recognized Bodies, shall be invariable and unquestionable, and thoroughly carried out.

Even should the Act in question be adapted, in any respects, to the attainment of the former object (though this must, from the nature of the case, be always less completely attainable than the latter*), it is clearly calculated to weaken and unsettle, instead of to make more certain, the attainment of the latter.

It appears, by the facts already stated in this Chapter, that the recognition of the churchwardens and other Parish officers, as those in whom the legal estate in charitable foundations and other parish property shall be, *ex officio*, vested; and the responsibility of these, for all their dealings and transactions in regard to the same, to the vestry of the parish of which they are the legal representatives; are no new principles. It appears equally obvious that the due administration of all parish charitable foundations can only be effectually secured, by the entire abrogation of the above-named technical rule (which has been already shown to be, even now, inconsistent and partial only in its application), and it being unequivocally declared (as intended by 59 Geo. III. c. 12; but which intention has been frustrated by sundry illogical decisions), that the legal estate in all such foundations shall be vested in the churchwardens, or in them together with other Parish officers, in virtue of their office, and in them only; subject to such responsibility as before mentioned to those who alone can, from the very nature of the case, ever have the real opportunity of knowing whether charities, endowed for such purposes as most parish charities exist for, are faithfully and judiciously administered.

It is clearly of the highest importance, as to these charities,

* And is far less attained by this Act than by the Act of Elizabeth.

that the sense of responsibility in the administrators, and the habit and practice of watchful scrutiny in the Parishioners, should be carefully cherished. The former of these objects can only be secured, by requiring the administration of them to take place always under the sanction and direction of the Vestries of the parishes to which they relate. The latter will be greatly promoted by requiring periodical returns, on such points as shall necessitate an habitual faithful attention to their duties by all parties, to be made from each parish to some responsible State Officer, or to some periodical visitation of Inquiry.

By the Act in question, however, no responsibility to the vestry for the administration of any parish properties is enforced. The trustees for holding the legal estate are retained. They have, indeed, additional facilities,—it may be said, inducements,—given them for the perpetration of wrongful acts. At the same time, powers of interference of an uncertain and arbitrary nature are given to an external and wholly irresponsible body; the operation of which must necessarily be, to lessen and gradually destroy all independence and faithfulness of action, and all disposition to act at all, in the vestries, and consequently all real responsibility in their representatives and officers. To crown all, fresh uncertainty is introduced on many points, which will necessarily lead to litigation, destructive to the charities themselves that it is professed to be intended to protect. The nature and probable operation of all this, will have the certain effect of checking the disposition of individuals to bestow their property, for the benefit of their successors in the parishes to which, through life, they were themselves attached.

There is nothing to which the functionary system is really more ill adapted than the present. To enable the duties committed to such functionaries to be even decently fulfilled, a very full and exact knowledge of the History and Law and Practice of Parishes, as well as of the records of Parishes, is necessary. This is a knowledge now unhappily possessed by none but those who have made it a matter of specially careful and practical inquiry. Functionaries appointed by the favour of a Minister, will be little likely to possess such qualifications. No amount of mere ability (supposing this accidentally to exist in such nominees) can supply the want of the practical know-

ledge alluded to. The results will be very serious and extensive, though the mischief done may not readily meet the public ear.*

To illustrate these points:—this Act authorizes *ex parte* secret applications by trustees, or even by any individual trustee, to the board constituted by the Act.† Nothing more indecent, more unjust to the public and even to the trustees, more contrary to the plainest rules of common right and honesty, and to the principles of English Law and administration, can be conceived. Yet this Act empowers the taking action, by trustees, on such *ex parte* secret applications; and gives indemnification to such trustees or trustee, at the expense of the charities, even though a judicial decision be afterwards given against the course pursued; and no matter how wilfully false the *ex parte* secret representations may have been. And all this is to be without any reference whatever to the parish vestry:—thus altogether over-riding that responsibility and authority which have been so long recognized, and which, in the case of parish charities, it ought, upon every admitted and just principle, to be the first consideration to maintain and render certain. Thus is the door directly opened to every abuse and perversion.‡

* An instance of such want of knowledge has already been given before, p. 22, note *.

† There is a pretence of protection against fraud and misrepresentation by Trustees; but it is entirely delusive, and of no sort of practical value. Section 16 of the Act is the one referred to.

‡ These remarks were published immediately after the passing of the Act. The results, since, have proved their correctness. The fault is not so much in the persons composing the "Charity Commission," as in the evil system of which they are the instruments. They receive and reply to any *ex parte* statement. The applicants naturally rely on the answer, however ill-considered, and act on it. Though it be ever so contrary to Law, or be given in plain misapprehension of the bearings of the subject, the effect is the same. When applied to on the subject by those directly concerned, the reply of the Trustees is that they rely on the advice of the Commissioners; that of the Commissioners is, that those concerned are not bound by the reply given to the Trustees by the Commissioners! But any re-consideration of the subject, or any attempt to prevent the mischief which ill-considered advice has raised, is refused with a discourtesy little indeed befitting the occasion and the parties. Thus the only result of the appointment of these functionaries, highly paid at the public expense, is, to set up, often, the false in place of the true, and, if there are any who will not submit to this, to make necessary a process of costly litigation. The administrators of charities will, of course, always shelter themselves under the opinion of the

Very wide and arbitrary powers, moreover, are given to the external body constituted by the Act ; thus necessarily depriving all vestries, in the same and even a greater proportion, of the power of independent action and deliberation ; and therefore discouraging the disposition to give attention to matters so important to the common welfare of the neighbourhood. Thus again, in another but no less sure mode, is the door opened to abuses and perversions which no central board can ever control or prevent, though it will thus necessarily generate them. Powers are given for altering the disposition of charities. An encouragement is given to all kinds of misappropriation, under the name of "New Schemes." This matter is, however, so uncertainly stated that it will be impossible to say, in many cases, whether they come within the terms of the Act or not ; and thus litigation will be encouraged. In other cases,* the terms of the Act make the maintenance or alteration of the original purpose of the foundation dependent solely (and quite irrespective of the Vestry of the Parish concerned) upon the arbitrary and variable opinions of the members of the Board constituted by the Act ; who will be subject to those influences which must always operate upon a central Body, necessarily ignorant of actual local circumstances.

Commissioners ; and thus, while the only object or pretext for the erection of the Charity Commission was, that mal-administration of charities might be prevented, the Commissioners do in fact, by the expression of such *ex parte* opinion or advice, become—if they happen to make any mistake in the History, the Law, or the Fact—no other than aiders and abettors of such mal-administration, and of the violation of what the law actually requires. This is not the less so in fact because they only thus advise through ignorance or misapprehension, and without intending such results. Nor is it to be forgotten that the Commissioners may, under section 17, interpose obstacles to any proceedings which would expose their own ignorance or carelessness.

Such results have occurred within my own knowledge. And such cases must be everywhere occurring under this "Charitable Trusts Act ;"—submitted to, as the encroachments of ecclesiastics have been submitted to, simply because it is a difficult and costly thing for individuals to stand up against wrong-doing when backed by conventional "authority" and by a free draft on the public purse. That such a device of functionarism as this Charity Commission is, can never avail to any good end, in reference to Parish Charities, is a necessary consequence of the very nature and wide dispersion of those Charities. Many cases have, however, already shown its inefficiency, even in matters within its direct purview.

* In all cases in fact. For, by section 56, the Board may alter and modify any scheme, without any notice to those concerned, till the mischief is done. It is easy to see to what this will lead.

All the Courts of Law are, for the first time, shorn, by this Act, of any independent authority; and Englishmen are deprived of their right to appeal to the Courts of Law, except in such cases and in such manner as the new Board may, at its arbitrary caprice, allow, and "upon and in conformity with an order or certificate of the said Board"!* It has already been seen that the Courts of Law restrained the illegal proceedings of another of these new devices of functionarism in England.† It was, therefore, a crafty and convenient scheme to make this last new device of the same sort actually superior to the Courts of Law; so that no one can even seek the protection of those Courts against the acts or neglects of this Board, without its own permission. Such is the progress of functionarism in England.

Some sections of the Act do indeed recognize the right of the inhabitants of parishes to a Notice of what is proposed to be done, in reference to the property which belongs to them as parishioners (thus affirming the responsibility of Trustees and others to them); but this is done in such a manner that the provisions are only applicable in certain cases; and they do not enact the requirement (without which the mere notice is nothing but an empty form) of the Vestry being assembled to deliberate and express an opinion upon the matter in question.

Since the first edition of this Volume was published, and in conformity with what was there said on the subject, it has been enacted that a statement of the accounts of every Charity identified with any Parish, shall be sent to the Churchwardens, within fourteen days after the 25th of March in each year, and be laid by them before the next Vestry, and be entered on the Minute Book. This is the only provision in all these enactments, by which the right administration of Parish Charities will be promoted. It is a highly important practical enactment. Care ought to be taken by every Vestry that these statements of account are duly laid before it, as this enactment requires. The Charity Commissioners will not help in this. It must be done by the Vestry and by the Parish Officers. It is the duty of the Vestry to take care that the Churchwardens have required the accounts; and that the requirement is enforced by them, through application for a Mandamus, if it be not fulfilled without this. As several Parishes are often interested in one and the same cha-

* 16 & 17 Vict. c. 137, s. 17.

† Pp. 162, 175.

ritable foundation, it must be distinctly understood that the terms of the Act entitle every Parish that is specifically interested in any charity, to a copy of the statement of accounts.*

For whatever evils had existed in the management or application of Parish Charities, the true remedy was simple. It was, to declare the illegality, in all respects, of the unmeaning and inconsistent technical rule which has been shown to have been the source of all the mischief; to declare the Parish Officers for the time being to be those in whom the legal title to all Parish Properties is absolutely vested; to insist on their thorough responsibility to the Parish for the mode of dealing with these; and to put every inducement before the Parish to enforce that responsibility.†

* The following is the section referred to (18 & 19 Vict. c. 124, s. 44).
 "The Trustees or Administrators of every charity shall, on or before the twenty-fifth day of March in every year, or such other day as may be fixed for that purpose by the Board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto: (that is to say,)

(1.) An account of the gross income arising from the endowment, or which ought to have arisen therefrom during the year ending on the thirty-first day of December then last, or on such other day as may have been appointed for this purpose by the Board:

(2.) An account of all balances in hand at the commencement of the year, and of all moneys received during the same year on account of the charity:

(3.) An account for the same period of all payments:

(4.) An account of all moneys owing to or from the charity, so far as conveniently may be;

Which accounts shall be certified under the hand of one or more of the said Trustees or Administrators, and shall be audited by the auditor of the charity, if any; and the said Trustees or Administrators shall, within fourteen days after the day appointed for making out such accounts, deliver or transmit a copy thereof to the Commissioners at their office in London, and in the case of Parochial Charities shall deliver another copy thereof to the Churchwarden or Churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next General Meeting of the Vestry of such parishes, and insert a copy thereof in the Minutes of the Vestry book; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said Board may seem fit; and any person may require a copy of every such account or of any part thereof, on paying therefor after the rate of two-pence for every seventy-two words or figures."

The "auditor of the Charity" will, in the case of any Parish Charity, be the Audit Committee named before, pp. 183-185.

† In a Petition presented by the author of these pages to the House of Lords on this subject in 1853, it was suggested that what was needed was,

Remaining, however, as the Trustee system in fact does, unabated in any of its actual or contingent evils,—but with these, on the contrary, put in danger of being much increased through late legislation—the proper course of every parish is, carefully and continually to insist upon the assertion, by the Churchwardens and Overseers, of that title which the 59th Geo. III. c. 12, s. 17, vests in them;—and to require the regular responsibility and annual account to the parish, by all Officers and all Trustees, as to all receipts, expenditure, and application of the proceeds, of such charities.* It must be insisted on that all Trustees who are still allowed to act, shall be held precisely in the same position, as regards responsibility, as the Parish Officers whom the existence of an unmeaning technical rule has alone led to be in any case superseded, on this one matter, by the Trustee system. Regular accounts, and audit of accounts, should be rigidly enforced.† If the Parish thus fulfil its duties, the mischiefs that would otherwise arise will, to a great extent, be averted; the abortive provisions of the “Charitable Trusts Act” will be of no consequence. It requires but honesty and firmness and self-respect to secure the due administration of Parish Charities. No Statute can secure this, unless—removing obstacles and mischiefs that have grown up—the moral dignity and responsibility of the parishioners are the means appealed to and relied on. Long before any “Charitable Trusts Act” such an enactment as “shall vest the full legal title to the property of all Parish Charities in the Churchwardens of the respective parishes, *ex officio*; and as shall secure the full responsibility of such Churchwardens, or of any others in whom may at any time be vested the legal estate in any property, as Trustees for any Charity identified with any Parish, to the public Vestry of each respective Parish; and as shall secure to such Vestry the full opportunity of deliberation, and shall require its special summons for that purpose, and its assent, as necessary preliminaries to any proposition or alteration as to the mode of application, disposition, or appropriation of the estate, funds, or proceeds of any charity or foundation which shall have been given or shall exist for the benefit of the inhabitants, or of any persons or class of persons, in any parish in England or Wales; and as shall maintain and promote the full and efficient action of all Vestries in this behalf.”

* See before, Chap. III. Sec. 9, of *Auditors*. The enactment already named, made in conformity with the suggestions in the first edition of this work, enables this to be now done under the immediate terms of the Act of the 18 & 19 Vict. c. 124, s. 44, which will be enforced by the Court of Queen’s Bench on application in the name of the Churchwardens of any Parish.

† It was well said in *Pears v. Green*, 1 Jacob & Walker 140, that the “being constantly ready with their accounts,” is the “first duty” of trustees.

was thought of, sound action had been taken on this matter by Parishes whose inhabitants were influenced by such a spirit and such motives. The following extracts from actual Minutes of Vestry,—of which a multitude more might be quoted,—are practical examples of this. All the sixty-eight sections of the “Charitable Trusts Act, 1853,” are of less point and value than any one of these Parish Bye-Laws.*

“Ordered, That a Book be provided, to insert an account of all Estates and Gifts belonging to this Parish, under the proper heads of Debtor and Creditor.” (1787.)

“That the Vestry Clerk revise and correct the table of gifts and legacies of pious and charitable benefactions left to the Parish of Hornsey; and that 500 copies of these be printed for the use of the parishioners.” (1787.)

“That the Vestry Clerk do, on or before the 5th of January, require every Trustee or Trustees of any Parish Estate or Charity to deliver their accounts up, made up to the 31st of December; and that a Book be kept for the entry of such accounts.” (1821.)

“That the Vestry Clerk do write to Mr. — [a Trustee], and inform him that the *Vestry alone* has the right of filling up any vacancy that may arise in any of the Parish Cottages.” (1831.)

And the following illustrates, as well the inconveniences of the Trustee system, as the proper care to be taken to provide against such inconveniences. At the same time, it provides against any attempt at action by Trustees, independent of the Vestry.

“Whereas inconveniences have arisen, and expenses have been incurred, through the want of regularity in the surrendering and taking up of Estates held by copy of Court Roll, and belonging to this Parish:—

“Resolved: That in future, when the number of Trustees for any estate belonging to the Parish shall be reduced to one, by death or non-residence in the Parish, the then remaining Trustee shall, at the ensuing court, surrender such Estate unto proper Trustees, *appointed by Vestry*,† to be admitted to the same.” (1792.)

Since the last date, the above-named Statute of 59 Geo. III

* These extracts are from the Minutes of Vestry of the Parish of Hornsey, Middlesex.

† See before, p. 272, note †.

c. 12, has been enacted. The wise course will now, therefore, always be, to appoint no more trustees in such a case; but, on every such failure of trustees, to let the estate vest, in accordance with that Statute, in the Churchwardens and Overseers, to hold the same, in the nature of a Body corporate, on behalf of the Parish. And this event of failure of Trustees may be, at any time, anticipated, by the estate being formally assigned to these officers, under order of Vestry, by any existing Trustees. Thus the narrow constructions attempted to be put upon the Act, need not, in any case, interfere with its being made practically available.

CHAPTER VI.

THE POSITION OF THE PARSON OR MINISTER IN RESPECT TO
THE AFFAIRS OF THE PARISH.

IN treating of the Parish, as a secular Institution, it is necessary to include a notice of the Minister, though he is not, usually, elected by the Parish. There are two reasons requiring this notice. The first is, that some functions relating to matters of secular interest have, in fact, been assigned to the Minister. The second is, because his actual position in the Parish is commonly very much misunderstood and strangely misrepresented ; whence many and most grave ill consequences have arisen, and are continually arising. These consequences not only affect the character of the Church, as a religious establishment, and the estimation in which it and its ministers are held : they also affect the secular concerns of every Parish.

The original intention of the endowments of the Church has been already shown.* It has been seen that this intention, so far from being narrow-minded and exclusive, was large-minded and one of thorough charity. It was, to provide that there should be no place in which there was not some one present, to remind men, continually, that there are duties attaching to every man which are other than selfish. It is difficult to see how any one who understands the origin of the religious foundations attached to every parish, can, although he may differ in matters of faith or opinion on special points, do other than, at the least, respect the principle of some provision of this nature being thus secured. No two minds are constituted precisely alike. Therefore, while whatever provision is thus made must practically take some special form, differences will necessarily grow up, where many think and exchange thought, on matters of

* See before, Chap. I. p. 28, etc. ; and see further, the Quotations after, p. 308, *note*.

opinion and faith. But whether or not it is well that there should be, everywhere present, some security for the perpetual reminder that man has other calls in life than what are selfish only, would seem to be a matter on which none but the selfish can have a doubt. To make the existence of such provision (if rightly applied and used) matter of complaint, seems no more reasonable than to complain of the existence of any other means, provided for what is truly of public necessity or advantage, because the mode of fulfilling the work does not (as it never can) agree with the notions of every one in the community.*

The mode in which the Ministers who fulfil the religious purposes of these endowments are appointed, does not seem any more fair matter of complaint, than is the fact that there is, or may be, a difference between their opinions and those of some individuals in their Parishes. Changes or modifications in the mode of their appointment, may be proper matter for discussion, under the altered circumstances of times.† But this cannot affect the original propriety of those who endowed churches appointing the persons who were entrusted with the charge of putting such endowments into active use. This is a principle now daily acted on in a hundred other instances, and the violation of which would be held a great hardship. It must not be forgotten that the Law of England has always been consistent in the application of this principle, whatever the mode of appointment of Ministers to which it has led. Ministers are not appointed by Patrons because the Parishioners are, or ever were, held unworthy of the trust of choosing the former : but because the main part of the endowment that sustained the minister was the original patron's gift. Where others than the responsible chief tenant of the land were the founders, their right of choice has always been recognized. Many cases of the sort, besides that of Piddington,‡ exist, in which, to this day, the Parishioners themselves choose their Minister.

* See further hereon, Chap. VIII. Sec. 5.

† The reader curious to follow the history of attempts in this direction, and the motives under which they have been made, may instructively examine the "Petition" of divers Ministers to the Lord Protector, 1654, with "reasons" annexed.

‡ Piddington is specified because the account of it occupies so much space in Kennett's 'Parochial Antiquities.' See pp. 580-614. So, the case of

Whatever mischief has grown up, has arisen from the departure, by the Ministers of the Church, from the functions and position which it was the object of the endowments to secure; and from the attempts constantly made to use the opportunities enjoyed through the means of these endowments, in order to usurp an influence and position inconsistent alike with the objects of such endowments and with the Institutions of the Country. The disposition to these attempts, characterizes our own day more, probably, than any former one in the history of this country. It is this that, far more than any difference in religious opinions, has drawn off, and is constantly tending to draw off, respect and affection from the established Church and her ministers; and which has led, and is continually leading, to the growth of every varied form of antagonism and dissent. Every honest man can respect and love, and heartily co-operate with, one from whose opinions on special forms of faith he conscientiously differs: but when a religious teacher, whatever form of opinion he may hold, and however conscientiously, assumes a claim, because he is such teacher, to have an authoritative voice, or to assume an authoritative position, in dealing with matters that have no sort of relation to questions of religious teaching, the moral sense of every man of honest and independent mind revolts from it, as a monstrous and insupportable assumption, altogether inconsistent with the character of the Christian minister, and fraught with social and moral evils of the worst kind. Nothing has done so much to lessen the legitimate influence of the established Church, and its hold on the affections of men, as the affront which has been and is now being continually put upon the intelligence and self-respect of men, by the unwise setting up of such pretensions as these on behalf of its Ministers.

It is very necessary to be understood in this use of the phrase "on behalf of," instead of "by." Much odium becomes often attached to the clergyman on account of his assumption of certain pretensions. But it should be remembered that the assumption of these is, to a great extent, forced upon him. There are very many of the clergy who desire to live at peace with all men; who would gladly avoid any conflict or offence; who would heartily rejoice to be free from all occa-

Devetan [Deritend] and Bordesley, *ib.* p. 595. As to the sale of Advowsons vested in Parishes, see 19 & 20 Vict. c. 50.

sions of such conflict ; and seek to sustain only the true position of the Christian Minister. But they have been wrongly taught that it is a part of their duty to sustain certain pretensions. The very implanting of such a notion, is part of that system of ecclesiastical tyranny, which has always been aiming to encroach alike on the liberties of the laity and on the self-respect of the Body of the clergy themselves. Laud's Canons treat the body of the clergy as a mere sort of State Police. And so, in fact, other late Canons, as well as many dogmatical ecclesiastical authorities, habitually treat them. Many among the clergy are anxious to help in developing the spirit and action of true Parish Local Self-Government. They seek no personal objects. They desire no personal exaltation. They are themselves as much victims of ecclesiastical usurpation as the laity :—nay, more so, because more helpless in the matter. It is the spirit and the class well characterized by Lord Clarendon two hundred years ago,*—a spirit and a class represented in our own day by the introducers of, for instance, 'Churchwardens' Election Bills,'†—that are the main source of such usurpations. It is to these that we owe the illegals' Canons already dwelt on. It is to these that we owe the effort to enforce those Canons, and to stretch even beyond them.‡

Thus much is due, out of respect to that large and most worthy Body of the Clergy of England who would be very unjustly charged with personal pretensions or personal attempts at usurpation.

The pretensions actually set up, however, on behalf of the clergy, are entirely inconsistent with the character and spirit of ecclesiastical foundations themselves. They are not only unsanctioned by the Law of England, but they are in direct antagonism with the whole spirit and practice of that Law. And, inasmuch as late writers on the Parish and the Minister, have (seemingly only to save trouble) copied one another in the assertion that the minister of the established Church is the Head of the Parish, and is of Right the Chairman of every Parish Vestry, it is proper here to state, in the most explicit and categorical manner, that this assertion is altogether unsustainable ;—that, on the contrary, the setting up, by or on be-

* See pp. 80, 304.

† See before, p. 87.

‡ See, particularly, the Sections on Churchwardens, Sextons, and Parish Clerks, in Chap. III.

half of any Minister, of such a position and claim, is not only not warranted by Law, but that it is absolutely and altogether contrary to both the Common and the Canon Law of England.

The distinction must be carefully taken, here, between what is illegal as a *claim* set up, and what is illegal as a matter of incidental and personal fact. It is illegal for any minister to set up any *claim*, or *pretence of right*, to occupy the chair at Parish Meetings. But there is not, on the other hand, any restriction imposed upon the Parishioners. If they please, they may choose the Minister to be their Chairman at any time; and he will accept the office, or not, according as he holds in regard, or not, the wise and often repeated injunctions of the ecclesiastical law against the Minister mixing himself up in secular affairs. One who is thus chosen, because he has secured the love of his neighbours by his faithful discharge of the duties of his calling, and his true realization of the means and opportunities entrusted to his use, will be likely, at any rate, to fill the Chair in a very different spirit, and with very different results, from what must be always present when it is filled only through the ignorant, or subservient, submission of Parishioners to the assumption of a claim of right.

It should here be remarked, to prevent misapprehension, that the actual position in the Parish, of a Minister presented to a living, is very different from that of a functionary set over a neighbourhood under the bureaucratic system. The Patron has no power of dictation or interference, when his act of presentation is over. The Minister does not remain in servile dependence on his pleasure;—a mere functionary, whose business it is to enforce, on the place he is set over, the dogmas and crotchets of some distant incapacity. Such is the position of all functionaries under the bureaucratic system. They are *in*, but never can become *of*, the places where they dwell. Subserviency to their bureaucratic superiors is a necessary part of their habit of mind and life. Social treachery and systematic hypocrisy are begotten and cherished. The last thing to be forgiven is an identification with the well-being and interests of their neighbours. All this is the reverse in the case of the sincere Minister when presented to a living. His parish immediately becomes the centre of his own affections. Though a fresh comer, he comes not as a meddler, with a hand on that

place, but a heart and interests elsewhere. He comes, as an infusion of fresh blood of the best quality (or which ought always to be so, if the Church fulfils her duty), to become immediately identified with the neighbourhood he is placed in. If not led astray by the temptation or imagined duty to set up wrongful pretensions, every interest calls on him to cultivate the affections of his neighbours, and to seek to win their goodwill. And, though the Parish does not choose him to his place in the ministry there, save in exceptional cases, yet, as already shown, the full means exist for the exercise by the Parish of a wholesome control over him in all things pertaining to his ministry.* If the Churchwardens and the Bishop respectively fulfil their obligations, the due discharge of the functions of the Minister will always be secured. The more those duties are well fulfilled, the greater will be the natural weight which the Minister will deservedly hold. Dissent will then be de- X
prived of her chief source of sustenance. Men will regard the spirit of a man's life and teachings, more than they will be disposed to scan narrowly mere outward forms, or differences of technical teaching or doctrine. The moment that *assumption* takes the place of this, the whole tendency is changed. It is those who dictate or urge such assumption, that are the true enemies of the Church.

The illegal encroachments and attempted usurpations of ecclesiastical authorities, in the matter of the choice of Churchwardens, and other Parish officers, have been already fully treated of; and their history and true character have been shown. Lord Coke records the opinions of all the Judges of England, given "with one unanimous consent,"† two years after the promulgation of the New Canons, by which the Law of the Land was sought to be overridden; and "by colour of" which Canons‡ it is, that most of these usurpations have been attempted to be enforced. In the course of those opinions occurs the remarkable declaration, well justified by those attempted usurpations,—the history of which is now too little understood, and which are therefore too much submitted to,—that "many ministers have grown OF LATE *more troublesome*

* See before, pp. 70, 93, and following.

† Second Institute, pp. 601 and 610.

‡ See 13 Coke's Reports, p. 70, where, as already quoted, p. 73, this exact phrase is used in reference to this subject.

to their Parishioners than in times past.”* This remarkable language ought not to be forgotten. But even then, bold and unconstitutional as their encroachments were, they had not attempted this last and cunningest device for grasping at ecclesiastical domination. The attempt to assume to be Head of the Parish, and President of all Parish meetings, is an invention of much later date. Even Laud went not so far.

This assumption and claim are, as has been said, without warrant of Law, or any support either from authority or principle. The solitary dictum† which can be cited in support of them, is a very late one; and is marked by the most striking

* See before, pp. 74, 80, 85 note §, and 238. Observe the quotation from Clarendon's History on p. 80. A very orthodox writer of Lord Clarendon's day, uses language very similar to that thus quoted, and to what abounds through the first Book of the 'History of the Rebellion.' Speaking, incidentally, of the clergy, this writer says:—"Here indeed the thing is so obvious, that I cannot avoid taking notice of, how that tribe of Levi, as they call themselves, do for the most part (for some of them wish things were better) mind the interest of the world, not that of Christ: instead of taking care of souls, which is their office, 'tis the least of their thoughts; they would be governing the State, and make an Hierarchical Monarchy, and it may be at last like the Roman Clergy, if they could turn monarchy into hierarchy, and instead of a Pope have a Patriarch. For that spirit, *since the Reformation*, [has] run into the blood of several of them." After giving some illustrations of this spirit he adds,—“Do they take this to be a nation that can be content to be priest-ridden?”—‘Some Observations upon the Keeping of the 30th January and the 29th May,’ 1694, p. 8.

† In *Wilson v. M'Math*, 3 B. and Ald. 244. The case of *R. v. D'Oyley*, 12 Adolphus and Ellis, p. 139, merely adopted the dictum in question. The latter case has already been remarked on, pp. 58, 62 notes. As to the character and value of such a case, I would, with the highest respect for the Court where it was entertained, refer to what has been said before, p. 13. All that any Court can do, is to declare,—it can never make,—the Law. The sole value of *Reports* of Cases is, that they give the *grounds and reasons* for the conclusion that what is declared to be the Law is, really, the Law. Hence the unspeakable value and ceaseless authority of Lord Coke's Reports. If such grounds or reasons are absent, the opinion cannot command respect. If it is clear that (as will happen to the most conscientious) amid the multitude of matters, the actual points of some special matter in question have not been looked into, we must regret that the judicial authority should have been mis-informed, and so mis-uttered; but it cannot, in that instance, command weight. It is open to any one to show that this is the case. On any important question, such as the present, it is a *duty* to do so. It happens, in the judgment in the case of *R. v. D'Oyley*, that its own language proves its hastiness and inconsiderateness. It speaks of a “common right” in the rector. This is a contradiction in terms. A “common right” is a right common to all. It is the very antithesis of any exclusive right. There is a

exhibition of either want of knowledge of the subject, or purposed misrepresentation of it, that can probably be found in the whole range of partisan sophistry; and which is certainly the more to be marvelled at and regretted when thus put forth under cover of judicial authority.

On a point of such great practical importance, it is necessary to enter at considerable detail into the proof of what is thus affirmed.

It is commonly said that nothing is so hard as to prove a Negative. But the proof of a negative sometimes involves the most striking and definitive demonstration of a contrary affirm-

Common Right in a Highway, or an Election, or in the discharge of the functions of some officer. There can be no Common Right in a man's freehold. In every other instance, the dicta in this case, on all the points with which we are now concerned, are equally loose and inconsiderate as on this. They are in the teeth of *facts*, of Acts of Parliament, and of the entire Principles and practice of the Common Law. The Rector is actually spoken of as "entitled to interfere" in bringing the Churchwardens into existence, and it is said that "the cases confirm this,"—in the face of the facts and authorities already named in the First Section of the Third Chapter of this work. (See particularly pp. 73–86, 93.) The rector is spoken of as being a "fit person" to give notice of vestry meetings, in the face of the uniform custom, authorities, and Acts of Parliament,—which, without exception, point out the Churchwardens, and other elected officers, as the proper officers for that purpose; and notwithstanding the entirely secular character of the Parish, as already proved throughout these pages, including illustrations even of this very point of summoning Vestries. As to the power of adjourning, or otherwise interfering with, the Meeting, it is sufficient to say that every authority, from the earliest times, is against it; that even the Speaker of the House of Commons cannot adjourn that House. It can only be done by the assent of the majority,—a universal Principle "both by the rules of the Common Law and the Civil." (Hakewell's '*Modus tenendi Parliamentum*,' 1671, p. 93.) And, in a case that will presently be cited at length, this is well illustrated by the fact that "anciently the Sheriff could not adjourn the County Court: though now the Law [by Statute] has put that power in him. But in this case, the Law has not placed it in any one: wherefore *we* [the Judges] *have not the power* to take it from those who have it, to place it in those who have it not. And, *even supposing* the Vicar had a power of presiding [which the Judges declare he has not], it does not follow that he has a power of adjourning." (Lord Hardwicke, in *Stoughton v. Reynolds*, Fortescue's Reports, p. 171.) As if to make the case of *R. v. D'Oyley* still more plainly unworthy of any weight, a previous volume of the same Reports contains this dictum of the same Court, in express reference to the Churchwardens:—"Those who summon a meeting of this kind, must necessarily lay down some order for the proceedings:"—thus referring to the Churchwardens the same duty which in *R. v. D'Oyley*, *where these circumstances were exactly the same*, is so anomalously set up as existing in the

ative. It is thus in the present case. It is clear that, were the pretensions now in question sustainable, these would be found most distinctly and unequivocally stated in the authorities on which ecclesiastical writers are in the habit of chiefly relying, and in the pages of those who have been the staunchest maintainers of what they have been taught to consider the rights and privileges of the clergy. If no mention is made of such pretensions, either in these authorities, or in those which record practical illustrations of Parish government, it remains demonstrated that those pretensions fall to the ground, as unauthorized, unsustainable, and illegal. This demonstration becomes but the more striking when it is found that these authorities, not only do not sustain the assumption of such pretensions, but contain the affirmative statement of what is directly inconsistent with such an assumption.

I proceed to examine these authorities in succession.

The Year Books contain the oldest records that we have of adjudged cases.* Among these there are several, of the highest interest and value, relating to Parish Government. But there is not one which affirms the right of the Priest or Minister to assume the Headship of the Parish, or to preside at parish meetings, or even to be considered an integral part of the parish. On the contrary, all these modern assumptions are, there, distinctly negated. The rights and powers of self-government in the inhabitants of a Parish, are distinctly and emphatically affirmed.

parson. In the same case, Mr. Justice Patteson says:—"If the Chairman had assumed a discretionary power of adjourning, he could not justify, [even] by saying he had announced that he would do so." (*R. v. Archdeacon of Chester*, 1 Adolphus and Ellis, p. 342.) Still less could he justify any arbitrary course at any meeting where he happens to preside.

I have thought it best thus to show the character of this case, rather than leave it unnoticed. Enough is said in the text to show what the real and uniform testimony of all the true authorities on this matter is. This case must, after such extraordinary perversion, follow the example of the series of cases on a parallel point, touching the office of Parish Clerk. That office was, in the first of these, vehemently declared to be a matter entirely under ecclesiastical control. Then, the Court began to see its error; but, in courtesy to the last decision, only ventured to *hesitate*. Finally, it turned completely round, and affirmed it, as positively, to be a purely temporal office. The three stages of this instructive case,—the first of them exactly parallel to the one before us,—will be found in *Strange's Reports*, pp. 776, 942, and 1108. For the rest, it is sufficient to refer the reader to the authorities cited in the text, on all the material points in immediate question.

* See the *Inquisitiones Nonarum* alluded to afterwards, p. 322.

The election of all the churchwardens by the inhabitants, and the power of the latter to remove the former, are distinctly and emphatically affirmed. It is distinctly and emphatically affirmed, that the governance and order of all things pertaining to the Church belongs to the Churchwardens, chosen by the inhabitants, and to them only.* But, more than this, it is distinctly and emphatically affirmed that, so far from the Parson being the head of the Parish, or an integral part of it, the Churchwardens can sue the Parson himself, on behalf of the Parish, in respect even of any of the ornaments of the church of which he is the incumbent; while the parson himself can sue no one in respect of any of these things. The point could hardly be stronger than this. There is a remarkable case recorded, in which the churchwardens of a Parish had sued the incumbent in respect of a Bell. His counsel sought to evade the charge on the plea, first, that he was himself a parishioner; then, that the Bell was annexed to the church, and the Parson is chief of the church:—no one would then have ventured to utter the absurdity of his being Head of the Parish. But it was unanimously held that these pleas were unsustainable; and that, while the parson could not himself sue in respect of any of these things,† not only were the Churchwardens the proper persons to sue, but the parson himself was liable to be thus sued by them.‡

It would be impossible for anything to give a more decided negative than this case does to all the pretensions now in question.

The *Canons* and *Constitutions* themselves of the Church, though they have been shown to give such just ground to the Judges of England unanimously to declare, how “Ministers have grown of late more troublesome to their Parishioners than in times past,” give no suggestion, sanction, nor colour to the pretensions in question. On the contrary, those Canons and Constitutions abound in the strictest injunctions to all Ministers of the Church, that they shall “as far as possible avoid

* Year Books, 12 Hen. VII. fo. 27, and the numerous other places quoted in Chap. III. Sec. 1.

† Of course the minister can sue,—and the distinction is well put in the above case,—for that of which he himself has the profit, as for grass cut on the glebe, etc. But this very point only serves to make his personal character the more clearly marked, and to illustrate his want of any corporate character in connection with the Parish.

‡ 11 Hen. IV. fo. 12. See also, before, p. 77.

secular matters and affairs.”* Further illustrations on this point will be presently given.

Neither does the *Statute Book* give any countenance to these pretensions. Entirely the reverse. The affairs of parishes are, as has been seen, oftentimes named therein. But the *Provost*, the *Constable*, and, more lately, the *Churchwardens*, are the Heads of the Parish alone there recognized. The cases of some very recent Statutes, in which the minister is named, will be presently touched on. We must go to the older ones, in order to get an insight into the Principle that pervades them.

Let us next see what light is thrown on these pretensions by the most distinguished ecclesiastical authorities.

There is no name of an ecclesiastical writer more habitually referred to, and considered as authoritative, than that of Bishop Gibson, the compiler of what professes to be, and is usually recognized as, the ecclesiastical ‘Codex.’ Nor did any ecclesiastic ever exhibit greater anxiety to exalt and maintain what he conceived to be the prerogatives of the clergy. It is this Christian Bishop who expresses the hope that what he says “may induce all incumbents, who have received the right of nomination from their predecessors, to be careful to transmit the same to their successors, and not to suffer that right to be lost or called in question, through *condescension* or *disuse*.”† The rights thus alluded to, are some of the usurpations sought to be enforced by the Canons. But even this writer does not venture to set up the pretensions now raised. No minister attempting to insist on filling the Chair of a Vestry Meeting, can cite Gibson’s ‘Codex’ as authority. On the contrary, he himself quotes, as a binding authority, a Constitution of the Church, which ordains that no clergyman shall mix in matters of secular jurisdiction.‡

But the case of Bishop Gibson is made the more remarkable, from the circumstance, that he is the only ecclesiastical authority that has ever been pretended to be able to be quoted, as giving a *precedent* for this modern usurpation of the Minister assuming to take the Chair, as matter of right, at Parish Meetings. The reference thus made is one of the most fatal points that could have been taken. The reference is not to anything stated by the learned writer in his text, nor even to anything

* Council of Cloveshoe. Spelman’s Concilia, p. 247.

† P. 214. These italics are so in original.

‡ P. 991.

quoted by him as authority; but to a mere *form* given by him in his appendix; namely, the form of a pretended instrument for the establishment of a Select Vestry. It is perfectly true that this form contains the attempt to invest the Minister with much authority, and with many unheard-of powers;—others of them not being even pretended to be sustainable, and being indeed preposterous in themselves. Among these powers and authority is included inferentially (but not even here directly) the presidency of the Select Vestry meeting. The very company which this inference is thus found in, weakens any pretence which the assumption thus attempted to be supported by reference to it, might have of legitimacy. It is clear, too, that were the general law thus, it would not need to be specially stated in reference to a Select Vestry. The claim of a right to the chair at Parish Meetings, made by any minister under cover of such a reference as this, would, in itself, therefore, be proof that no right whatever to such assumption exists. That reference, if it proved anything, would prove that the Minister could not take the chair without a *special authorization*,—instead of being proof that such is the general law. But the climax of absurdity is given to the making reference to this as an authority in support of these modern pretensions, by the fact that even any such instrument—or “Faculty” as it is called—for the formation of a Select Vestry, is, in itself, absolutely, inherently, and altogether void,—merely so much waste-paper. This is settled and indisputable.* It is, indeed, so clear, that in other places (which those who make reference to this place take care not to quote) Bishop Gibson himself acknowledges its illegality, when he states *custom* to be necessary to the legality of a Select Vestry.† If the instrument itself is void, much more so must be all the powers pretended to be specially given by it.

The citation of such an authority, in support of such pretensions, is, certainly, thoroughly consistent with the spirit of the encroachments and pretensions thus sought to be fortified.

* See before, as to Select Vestries in general, p. 237, etc.; and the quotation there, from Spelman, on pp. 238, 239. As to the immediate point, one authority on a matter so incontestable will be enough. “It is clear,” said Lord Tenterden, “that these Faculties have no validity in Law.” *Goldring v. Fenn*, 7 Barnewall and Cresswell, 781. The Constitutional Principle of this is thoroughly plain. Forms of Local Self-Government can never be *imposed*; they must be *adopted*. See ‘Local Self-Government,’ etc., pp. 101, 252.

† See ‘Codex,’ pp. 216, 219; and see before, p. 238 note †.

But is it not amazing that such a passage should ever have been gravely cited to support any proposition?

An elder authority, referred to often by Gibson, and which is one of the standard references of all writers on the English Church, is Lyndwood's *Constitutions*. But in vain can the pages of Lyndwood be searched for support or sanction to these modern pretensions. The reverse, strongly expressed, will indeed be found in these 'Constitutions.' It is a Constitution found in Lyndwood, that has already been alluded to, as quoted by Bishop Gibson. But Gibson does not even quote all that bears on the matter. The title of one of these Constitutions (that is, laws of the Church) is ;—"None of the clergy shall have to do with secular affairs."* The language of another is very remarkable. It expressly prohibits any beneficed clergyman from taking any responsible position as to secular affairs in respect to towns or parishes ; *or such position as will involve him in discussions on matters with the laity* ;†—an absolute prohibition of the very thing which is, in our day, sought, by some, to be enforced as the function of the Minister. In another Constitution, the reason for these prohibitions is thus well assigned :—"The special mark of ecclesiastical worthiness consists in the being far removed from worldly things, and that hands dedicated to religious ministry shall not mix themselves in secular affairs."‡ Assuredly the views of the spirit and purpose of religious minis-

* See before, from the Council of Cloveshoe, on p. 298. The words of the original are :—"Sciant se necessario pro Dei intuitu debere a sæcularibus negotiis causisque, in quantum prævaleant, vacare."

† To prevent its being supposed that there is any distortion of the meaning, I quote the original words :—"Præsenti decreto statuimus, *ne Clerici beneficiati, aut in sacris ordinibus constituti, Villarum Procuratores admittantur ; videlicet ut sint Senescalli aut Ballivi talium administrationum, occasione quarum laicis in reddendis ratiociniis obligentur : nec jurisdictiones exerceant sæculares : etc.*" Lyndwood's 'Constitutiones Angliæ' (Oxon. 1679), p. 269.

‡ "Cum honestatis ecclesiasticæ speciale decus existat a carnalibus longè fieri actibus, nec sæcularibus negotiis ministrare manus deputatas cælestibus ministeriis." (Constitutiones Othoboni, Oxon. 1679, p. 89.) More passages could be quoted from these Constitutions of the English Church : but it is conceived that the above are enough. They are conclusive.

It must be remembered that all these passages are part of the Canons and Constitutions of the Church—the Statutes binding on the English Clergy—at the present day. It may not be amiss, therefore, to remind the clergy, and the supporters of all these unlawful pretensions, of the words of a solemn judgment of the House of Lords in a not distant case. "Usage, however

try must have undergone a marvellous change, when,—instead of the minister of religion being thus warned not to mix himself up in secular affairs, nor get involved in discussions on the affairs of the Laity, but to be consistent in profession and practice,—the fact of his being a minister of religion is made the very pretext for his being taught that he should force himself in, under pretence of a right *thence* derived, to be the dictator and head man,—“procurator” and “seneschal,”—in all the secular affairs that concern his Parish! Some may short-sightedly conceive such claims to be to the glory and exaltation of the church. Instead of this, the setting up of such claims does in fact degrade the Church into being a mere sort of police instrument, used, under cover of religious teaching, to control and crush out the independence of action and thought of men in dealing with their secular affairs; action and thought which true religious sentiment will temper and elevate; but without thorough independence in the exercise of which, all religious profession itself is hollow and barren.

Another standard ecclesiastical authority, of the highest acknowledged weight, is Degge’s *Parson’s Counsellor*. This work points out the *Duties* of every minister; and has a special chapter on “what *Privileges* are allowed to the Clergy, by the Statute and Common Laws of this realm, and what are pretended to by the Ecclesiastical Laws.” Yet, neither in treating of the Duties nor the Privileges, is the taking precedence in Parish Meetings mentioned; nor is the slightest colour given for the modern pretence of the Minister engrossing the Chair, or the Headship of the Parish. On the contrary, it is again expressly declared that “they are not compellable to serve in *any* temporal office, as sheriff, constable, overseer of the poor, etc.” Nor are they “bound to appear or do suit at the sheriff’s tourn or any leet or law day.”* And the same writer goes further; for he says:—“If a clergyman have lands,

long and inveterate, can be binding and operative only as it is the interpreter of a doubtful law, as affording a contemporary interpretation: but it is quite plain, as against a plain statutory law, no usage is of any avail.” *Dunbar v. Roxburghe*, 3 Cl. & Fin. 354. The above statutory laws are, therefore, still binding on the clergy; and thus contradict, entirely, the statement in the last line of *R. v. D’Oyley*, 12 A. & E. p. 159. And the 25 Hen. VIII. c. 19 is no less binding, to vacate any usage that may have wrongfully grown up under any of the Canons. See before, pp. 72–86.

* Degge’s ‘*Parson’s Counsellor*’ (ed. 1820), pp. 187, 189.

by the *tenure* of which he is *subject* to be bailiff, reeve, or beadel, and be chosen into any such office by reason thereof, he has a cursory writ out of the chancery, to discharge himself.”* The offices of bailiff and reeve are precisely identical, in both nature and functions, with what it is, in modern times, attempted to set up as the function and right of the Minister in every parish in the land! Yet Degge thus declares, that, even though a clergyman happens, as a private man, to hold land, the very *condition* of the holding of which is the fulfilment of such duties, he shall, if chosen to their fulfilment, be discharged, on the ground that he is a clergyman;—the very ground on which the illegal pretensions advanced in our day are attempted to be set up.

The prohibition thus contained in Degge, precisely agrees, it will be seen, in both substance and spirit, with what has been already quoted from Lyndwood and Gibson. If we refer to other authorities on the same point, the prohibition only becomes the stronger. Thus Fitzherbert declares that, “though a man holds lands or tenements,† by reason of which he ought to be elected Bailiff, Beadel, or Reeve, or to any other such office; and if such a man shall be made a clergyman; *then he must not be chosen into such office*. And if he should be chosen into such office, he will have the following writ.” And the writ, of which he gives the form, says:—“Whereas, *according to the law and custom of our kingdom of England, clerks in holy orders ought not to be chosen*” to such secular offices; and A. B. has been so chosen, “*contrary to the said law and custom*;” and it proceeds to say that “it is not consonant to right” that the clergyman, who was appointed “for maintaining and upholding works of piety,” should be called away to meddle in “secular affairs.”‡ This language, contained in the dry and matter-of-fact pages of this high authority on the Common Law, is very striking. Its precise accordance with the spirit and terms of the Canons and Constitutions of the Church itself, give additional significance to the terms of those Canons and Constitutions as quoted above.§ Nor would it be proper to

* Degge’s ‘Parson’s Counsellor,’ p. 190.

† See, again, on the fact of holding lands, farms, or otherwise, statute 21 Hen. VIII. c. 13.

‡ Fitzherbert’s ‘Natura Brevium,’ p. 175 (b). See before, p. 258.

§ And see p. 300, note ‡. See also, Lee’s Case, 1 Levinz, 105.

leave unquoted, here, the express and conclusive language of Lord Coke himself. "The Common Law," says he, "to the intent that ecclesiastical persons might the better discharge their duty in celebration of divine service, and *not to be intangled with temporal business*, hath provided, that if any of them be chosen to any temporal office, he may have his writ, and thereof be discharged."*

Thus antagonistic is the whole spirit and plain letter, both of the ecclesiastical and common law, to the pretensions set up in our day ;—by which it is sought to take the Christian Minister out of his sphere and function, and to entangle him in all secular affairs—to make him president and head therein—under cover of that very function which the law, as well as clear moral and religious considerations, declares to incapacitate him from taking any active part in such affairs.

Returning, again, to the ecclesiastical authorities, Kennett, the well-known author of the '*Parochial Antiquities*,' may be mentioned. There is no stauncher maintainer of what he believed to be the rights and privileges of the clergy than this writer. Yet, through his 703 pages, nothing is to be found in support of these modern pretensions.

Another writer of great and just authority is Stillingfleet, Bishop of Worcester ; whose work, on the '*Duties and Rights of the Parochial Clergy*,' enjoys a deserved reputation. The very title of this work itself, and the particular titles of two chapters in it,—"*Of the Nature of the Trust committed to the Parochial Clergy*," and, "*Of the Particular Duties of the Parochial Clergy*,"—must satisfy any one that, if the pretended authority over Vestry meetings of the Parishioners, now attempted to be set up, had any real existence, it would be named and dwelt on in its pages. But not a word is said on the subject. It is clear that Dr. Stillingfleet did not know of this, as among the "*duties and rights of the Parochial clergy*." But, as in the other cases referred to, though nothing can be found here, favouring this modern attempt at ecclesiastical domination, there is strong matter found against such a perversion of the office and functions of the Christian minister. The author dwells particularly on a proposition then afloat, for "*Parochial or Congregational Discipline*," over which it was proposed that the Minister should preside ;—a proposition closely resembling,

* Coke upon Littleton, p. 96 (a).

in effect, what is set up in the unlawful attempt to secure the supremacy of the Clergy, by means of the minister engrossing the Chair at all Parish Meetings. The Bishop does not approve of the design, and gives his reasons against it. The reasons which he thus gives, apply, with precise pertinency, to the modern unlawful attempt.

“*Every one*,” says he, “*who hath a faculty of preaching, hath not a faculty of judging in such cases. And, where discretion and a judgment of circumstances is wanting, an honest mind will not secure men from doing injury, and exposing their judicature to contempt.*” The truth of this is daily exemplified in the conduct of clergymen,—most excellent men as ministers,—when they assume the totally inconsistent position of Chairmen of Public Meetings. There is no class of men so entirely unfitted, by all their education and habits, and by the very nature of their duties, for fulfilling such a position. The language thus used by Stillingfleet is quite as strong, for a Bishop, and entirely the same in spirit, as that of Lord Clarendon, when he says that, “Clergymen understand the least, and take the worst measure, of human affairs, of all mankind that can read and write.” Hence they do, unquestionably,—apart from the ungracefulness of such an attempt at self-exaltation,—draw on themselves “contempt,” and on the church discredit and dishonour, by the assumption of such a position. “What miserable disorder,” continues Stillingfleet, “must follow an arbitrary method, when humour, and will, and passion may overrule justice, and equity, and conscience.”* Accustomed, as the Minister necessarily is, be he Churchman or Dissenter, to a habit and tone of pronouncing *ex cathedrâ*, there is no class of men who are so little able calmly and patiently to listen to the contradictions and discussions which are the essence of a Public Meeting of Parishioners,—and thus none so little able impartially to preside at such meetings. Wise, indeed, is the Constitution, already quoted, which forbids them to mix in such discussions with the Laity. It is the Minister’s education and habit to preach—to give forth—the truth, as he believes it, in all earnestness and zeal, but still uncontradicted and unanswered. It is the business and habit of all Public Meetings of Parishioners about their affairs, to *get at the truth* by the enunciation of opposite views; and so to obtain the comparison of several,

* Stillingfleet’s ‘*Ecclesiastical Cases*’ (ed. 1698), p. 151.

and a sifted result. Every one knows the tone and the manner in which ministers ordinarily meet this sort of thing, and the arbitrary and unjustifiable proceedings to which they, more than any other men in the world, too often have recourse, when, unhappily, in the Chair on such occasions.

Another established authority among ecclesiastical writers, is Ayliffe's "Parergon; or a commentary by way of supplement to the Canons and Constitutions of the Church of England, not only from the Books of the Canon and Civil Law, but likewise from the Statute and Common Law of the realm." Sir William Scott (Lord Stowell) called this the best book extant on Parish Law. Ayliffe dwells particularly on the "Parish, Parish-rights," etc., and on the clergy and "their privileges." A commentator on the Canons and Constitutions, treating on such matters, and deriving his Commentary expressly "from the Statute and Common Law," as well as "from the Canon and Civil Law," would certainly not omit mention of the functions in question, if they had any real existence, or if the pretensions now set up were sustainable. But he, also, has nothing to say in support of these modern attempts to set up the claim to precedency and chairmanship. On the contrary, as in the case of every real authority, Ayliffe both inferentially and directly contradicts any such pretensions. He thus defines, for instance, the "parochial right," that is, the function of the Minister in his parish. "The *object* of a parochial right," he says, "is the cure of souls committed to the Parish-priest; and this cure of souls consists in the celebration of divine service, in teaching and instructing the people of his parish, and in the administration of the Sacraments."* There is not a word about presiding at meetings of the Parishioners.

But, where Ayliffe speaks of the clergy and "their privileges," he becomes still more unmistakeable. Not only does he repeat, what so many Constitutions and authorities have been seen explicitly to declare, that it is "the ancient law of this kingdom that the clergy shall fulfil no secular functions;"† but he puts his own view beyond mistake, on the very point before us, by quoting a law, which he treats as one which ought

* Parergon, p. 407.

† Parergon, p. 188. "Quod Clerici non ponantur in officia;" and again, "Vir militans Deo non implicetur sæcularibus negotiis." Dr. Lee's Case, 1 Levinz, 105. See before, p. 300, note ‡.

to be still considered binding, whereby "they [clergymen] are commanded to abstain from all conventicles [meetings] of men whatsoever, even out of the church ; to have nothing to do with State-affairs and public business."*

Having thus shown what is the tenour of the highest and most universally acknowledged authorities, on this subject, it must be added that one later writer, and one only, deemed of any authority on any point, has a passage which has been quoted in support of the modern usurpation. This solitary exception, were it really one, would certainly not suffice to outweigh all those that have been quoted to a contrary effect. It would rather be an exception, helping to prove the rule. But even this passage itself, though written by an ecclesiastic, will, when examined, be found to bear conclusively *against*, instead of at all in support of, the pretensions attempted to be set up in modern times ; while, unlike every one of the authorities to a contrary effect already cited, the writer quotes nothing whatever in proof of the position which, so far as it goes, he attempts to deduce from his premises.

Dean Prideaux, the writer alluded to, in his work entitled 'Directions to Churchwardens,' has the following passage :—

"All those who pay nothing to the church, ought not to have any vote in any affairs relating to it. But this must not be understood of the Minister, though he be not charged to those rates ; because, as having the freehold of the church, he hath a special right in it, and, as minister of it, he hath a *special duty upon him to see*, that it be well and duly repaired, and *that rates be made to enable the churchwardens to do it* ; and he must be responsible to the bishop for his care herein. And, *therefore*, in every parish meeting he presides, for the regulating and directing of *this matter*."†

It is clear that, while the conclusion,—the "*therefore*,"—here drawn—narrowly limited as it will be observed to be—does not at all necessarily follow, even if the premises stated are sound, that conclusion altogether fails, and becomes negative, if those premises are unsustainable. Now it happens that nothing can be more, and more clearly, unsustainable than the premises on which even this limited conclusion is founded. Dean Prideaux quotes no authority whatever for the last sen-

* Parergon, p. 186.

† Dean Prideaux's 'Directions to Churchwardens,' edition 1830, p. 92.

tence—the conclusion drawn—in the paragraph cited. But he does profess to quote two authorities for the preceding sentences,—the premises to that conclusion. Instead of supporting his propositions, however, both those authorities prove exactly the reverse; and thus clearly upset altogether both conclusion and premises. The authorities he thus refers to, have both been already cited in this chapter in reference to other points.

The references in question are to certain Constitutions contained in Lyndwood, and in the *Constitutiones Othoboni*; and to certain comments thereupon. The latter Constitution, being first quoted, shall be first examined. Instead of its declaring that the minister may mix, in any shape, in the meetings and votings of the Parishioners, still less that “he hath a special duty to see that *rates be made* to enable” the repair of the church, this Constitution expressly declares that the whole of the Church must be repaired and maintained *at the expense of the incumbent himself*: and it is to this effect, and *not* to the one represented, that the Bishop is commanded to admonish him. If he neglects the admonition, the Bishop is, by the same Constitution, commanded to see the repairs done,—*not* by a rate levied on the parishioners, but “out of the fruits of the benefice.” It is, indeed, remarkable that the first words of this Constitution recite that some, “urged by wicked avarice,* while they reap the fruits of their churches and ecclesiastical benefices, neglect the buildings, etc.” And it is express that “*every clergyman*” shall *keep these in repair*,—not, *see them so kept* by others; and that, if he neglects this, the Bishop shall see what is needed done, “at the expense of the clergyman himself.”†

* Compare these remarkable words with the phrase “worthily noted of ingratitude,” used also of the same persons, in the Injunctions of Edward VI. and Elizabeth; before, p. 95, *note*.

† *Constitutiones Domini Othoboni* (ed. 1679), p. 112 (*De domibus ecclesiarum reficiendis*). To prevent the possibility of mistake, I give the original at full length:—“*Improbam quorundam avaritiam prosequentes, qui cum de suis Ecclesiis et Ecclesiasticis Beneficiis multa bona suscipiant, Domos ipsarum, et cætera Edificia negligunt, ita ut integra ea non conservent et diruta non restaurent; propter quod Ecclesiarum ipsarum statum deformitas occupat, et multa incommoda subsequuntur: Statuimus et Præcipimus, ut universi Clerici suorum beneficiorum Domos, et cætera Edificia, prout indigerint, reficere studeant condecenter, ad quod per Episcopos suos vel Archidiaconos sollicitè moneantur. Si quis verò post Episcopi vel Archidiaconi monitionem per duos menses id facere cessaverit extunc Episcopus ipsius Clerici sumpti-*

To make the matter plainer, the note of the commentators on the words of this passage, to which note, also, Prideaux expressly refers, adds :—" *Of Common Right* the fabric and *reparation* of the Church pertains to the Rector. *And so the Laymen* [elsewhere "the parishioners"] *are, of common right, NOT bound to this repair.*" The commentator does, indeed, add that the lay parishioners have got, in many places, into a custom of contributing to the repair. But it would indeed be strange if advantage is to be taken of a wrong springing out of "wicked avarice;" and if, because the incumbents have neglected their own duty, and the parishioners, sooner than see their churches perish, have repaired these at their own expense, the incumbent is to get, "*therefore,*" a right of intermeddling in what the parishioners thus do solely in consequence of his own default. It would be still more strange if he is thus to get also a power of intermeddling in all other matters.

That this is not too strong language will be plain from the admissions of later writers on English Ecclesiastical Law. Thus Watson, in his 'Clergyman's Law,' while giving no sort of colour to the modern encroachments of ecclesiastical domination, speaks as follows of the repairing of Churches :*—"The parson, by repairing, doth no more than what he is bound to do of common right. Nay, *by the Canon or Common Law of*

bus, id fieri faciat diligenter, *de fructibus ipsius Ecclesiæ et Beneficii* præsentis auctoritate Statuti; tantum accipi faciens, quantum ad refectionem hujusmodi sufficiat peragendam."

That this Constitution was no novelty, but simply the enforcement of the old established Law, will be seen from the following extracts :—

"*Ut ipsi Sacerdotes à populis suscipiant decimas, et nomina eorum quicunque dederint scripta habeant, et secundum auctoritatem canonicam coram timentibus dividant; et ad ornamentum ecclesiæ primam eligant partem; secundam autem ad usum pauperum atque peregrinorum, per eorum manus misericorditer cum omni humilitate dispensent; tertiam verò sibimet ipsis Sacerdotes reservent.*" (Spelman's 'Concilia,' p. 259.)—"Sancti etiam patres statuerunt, ut Ecclesiæ Dei decimas suas quique conferant, tradanturque eo Sacerdoti, qui easdem in tres distribuat portiones : *unam ad Ecclesiæ reparationem; alteram pauperibus erogandam; tertiam verò Ministris Dei qui Ecclesiam ibi curant*" (*Ib.*, p. 578). The reader must again be referred to the note ‡, p. 300. Where the Parishioners have repaired the Church, it has been, and is, an act of grace on their part, a benefaction from them to the Minister, and *not an obligation*. The *obligation* rests on the Minister.

Of course the "*Minister*" in this case, means the "*parson*;" that is, the person who is in the enjoyment of the fruits of the benefice, whether he be a beneficed clergyman in possession, an appropriator, or an impropiator. See before, pp. 28-31, 95, 96, notes.

* Edition 1725, pp. 387, 388.

the Church, the person that receives the profits of any church is bound to repair the *whole church*. And so is the practice in all countries but in England ; where custom only doth transfer the burthen of repairing the Body of the Church, and fencing of the Churchyard, upon the Parishioners." And again :—" The parson, appropriator, or impropriator, repairs of *common right* (for *opus ibit cum emolumentis* is the Canon Law in this case) ; but parishioners by prescription only,—the people undertaking that burthen that would otherwise have been on incumbents."*

The other reference made by Prideaux is to the same effect as that already quoted. The burthen in question is required to be borne by the incumbent, not by the Parishioners.† To this passage also there is a note to the same effect as that already mentioned.

In none of the passages thus referred to is a word said, or hinted, about the minister's interfering, as suggested for a conclusion by Prideaux, in the making of the rate, even where the Parishioners have relieved him from what is an obligation on himself, by taking the support of the fabric on themselves. Their thus relieving him from this obligation does, on the other hand, make the attempt or claim for the minister to thrust himself in as chairman of their meetings, a matter of peculiar indecency, as well as illegality.

It thus appears that nothing could be more unfortunate than the references made by Dean Prideaux, in support of the pretensions of the clergy to assume precedency at any Parish Meetings whatever. But, even were his premises sound,—instead of being, as they are, altogether unsustainable,—and did the consequence he draws follow from those premises,—which it obviously does not,—he himself limits the occasion, both by the reason he gives and by express words, to the single instance of the parishioners meeting to make a Church Rate. " He presides for the regulating and directing of *this matter*." Instead, therefore, of his supporting the general assumption attempted to be set up in our time, Prideaux actually *excludes* its sustainability by the very terms he uses.

It is truly significant that no other passage than the above is able to be cited from Prideaux in support of this usurpation.

* See the note on last page.

† Lyndwood, p. 53 ; which must be compared with *ib.* pp. 250, etc. etc.

Had it any colour of right or custom, his pages would not have failed to record and press it.

Whatever way he be regarded, therefore, Dean Prideaux ceases to be an authority in favour of the attempted extension of ecclesiastical domination. He becomes marshalled, on the contrary, as a very striking illustration of the unsustainability and illegality of every attempt, even toward any step in the direction of these pretensions ; and also of the sort of grounds on which such pretensions are sought to be sustained ; and of the true bearing of these grounds when actually sifted.

On the evidences thus produced, of the illegality, both by Ecclesiastical and Common Law, of the pretensions attempted to be set up in our time for ecclesiastical domination in Parish Government, it would be sufficient to rest. But the importance, and daily practical bearing, of the considerations involved, make it desirable to notice a few more illustrations bearing on the matter.

In 1736, a celebrated case, usually known as that of *Stoughton v. Reynolds*, came before the Court of King's Bench, in which the whole point turned on the position of the Minister in relation to the Parishioners, in Vestry assembled. It is a direct case, therefore, bearing upon the present question. So important a case was this felt to be, that accounts of it are found in three separate, but all distinguished, contemporaneous collections of Reports. Each one of these differs in some details ;—so that there exist unusual means for testing the exactness of the ideas expressed, and for clearly understanding the real points insisted upon. That there may be no possibility of misapprehension, the substance of each Report shall be here given, in its own words.

It must be specially remarked that, in this case, the older authorities, the Canon and Ecclesiastical Law upon the subject, which have been above brought before the reader, were not gone into at all. The question is put upon the grounds it stands on at Common Law ; and, even at Common Law, as looked at from other points of view than those above quoted from Lord Coke and other authorities. Its importance here therefore is this :—that it shows that the Principle of the Common Law, from whatever point of view it may be looked at, confirms and agrees with what has been already shown to be the unequivocal rule of the Ecclesiastical and Canon Law.

The case was one arising out of the election of a churchwarden. A Vestry was held for this purpose *in the Church*,—a fact which will hereafter be found to be material. The Vicar assumed to occupy the chair; and, in virtue of his assumed right there, further assumed of his own authority to adjourn the Vestry. The whole case, therefore, turned upon the assumption by the minister of the right of presiding, and the consequent power of the minister in a parish meeting. That this is the true point, is admitted by the counsel on both sides. The plaintiff's counsel says:—"The principal question is, in whom the right of adjourning vestries resides;"* and, that the assumed right "will be, in effect, vesting the whole in the parson, who never summons the vestries, that being the office of the churchwardens." The defendant's counsel, on the other hand, distinctly admits that this question of the right to adjourn depends on the occupancy of the chair: and it is clear that, while being chairman does not necessarily give any power of adjournment,† he who has no rightful position as Chairman, can have no sort of pretence to the power of adjournment. "The Jury have found," he says, "that the vicar was in the chair; *i. e.* that he presided in the assembly: *from whence* it may be naturally inferred, he had the right to adjourn."‡ Elsewhere this is reported as follows:—"It is found that the vicar was in the chair: and, *consequently*, the power of adjournment must be in him."§ In the third Report, it is thus stated:—the plaintiff's counsel says,—“The question is, in whom the right of adjournment is? It is now held in many cases, and has been determined, that the 89th Canon of 1603 is contrary to Law, and has never been received as Law. As it is a Canon against Common Right, so it is against Common Law: and on that consideration ought to receive a strict and rigid construction. The office of churchwarden is a ministerial office, and a temporal matter, in which the Ecclesiastical Court has no right to interfere.” The defendant's counsel himself says: “There are *more questions* arise in this case than that of

* Strange's Reports, p. 1045.

† A point distinctly admitted, as unquestionable, in *R. v. Archdeacon of Chester*, 1 A. & E. 342; in which case, both the summons of Vestry and notice of adjournment were given by the Churchwardens; and the adjournment was then sustained on that ground alone.

‡ Strange's Reports, p. 1045.

§ Lee's Cases, temp. Lord Hardwicke, p. 275.

the right of adjournment only. . . . It is likewise found that the vicar *sate in the chair*; and, in all assemblies, as at the Sessions, he that sits in the chair presides of course, and *consequently* has the right of adjournment. . . . It is well known the Mayor is the person that, in all corporate assemblies, presides, and has the right of adjournment in him: the Vicar has as much right of being there as any person at all, and it must either be in him or in no one.”*

This distinctly shows that the attempt was then made, to set up the minister of one particular form of religious faith in every parish, as the secular head of the Parish, parallel with the Mayor in Boroughs; in direct and categorical opposition to all the Ecclesiastical laws themselves, so many illustrations of which have been already quoted, to say nothing of Common and Statute Law.† The plaintiff’s counsel justly remarks, in the above case, as to such monstrous pretensions:—“Though the Mayor presides in the chair, yet the adjournment is looked upon as the act of the Court: and the Mayor is the most essential part of those assemblies corporate; *which differs widely from the case of the Vicar, who can, at most, be looked upon only as a Parishioner.* The giving such a power of adjournment at those assemblies, would be setting them [the ministers] at the head of every Parish in the kingdom.”‡ This view was entirely borne out by the judgment of the Court.

It being thus admitted on all sides that the question turned upon the position of the minister, let us next observe the careful and elaborate judgment delivered in the case by the eminent Chief Justice, Lord Hardwicke, as well as the opinions expressed by the other judges present. It may be remarked that there was no dissentient among the judges on any of the points.

According to one Report, Lord Hardwicke said :§—“ *This is*

* Fortescue’s Reports, p. 169. See below, *note* ‡.

† See an example of the latter, before, p. 68, *note* †; which is very instructive. Had the Minister, as is now pretended by ecclesiastical authorities, been Head of the Parish, he would have been named there. Instead of this, the Churchwardens are named.

‡ Fortescue, p. 170. The last phrase, as well as the language of the defendant’s counsel, shows that the pretension to be “head of the Parish” had not, before then, been made or admitted. See also *R. v. Winchester*, 7 East, 573.

§ The points and passages not touching upon the present question are omitted here; and those only. See one of these before, p. 295, *note*.

a question of great consequence as to the rights of all the parish, and their rates; and I have heard nothing to satisfy me that this was a regular adjournment. The power must arise from the custom, or common law. Here is no custom found, and I know of no book that shows how it stands at common law.* As to the Vicar, he seems to have *no share in the election of the second Churchwarden*, NOR TO HAVE ANY RIGHT TO PRESIDE. We must resort to the *Common Right*, which is in the *whole assembly*, where *all are upon an equal foot*. And, though there may be a difficulty in polling for an adjournment, yet, as there is no other way, that must be taken. *It would be giving the Vicar too much influence*, to fix it in him and his Churchwarden.”†

Another Report, more full, is as follows, on these matters: Lord Hardwicke says:—“I hear no reasons given that satisfy me that it was a good adjournment. Whether it was so or not, depends on a previous question,—in whom the power of adjournment was. And that was said to be in the vicar and one of the churchwardens.‡ That must be, if it be so, either by custom,—but in this case no such custom is found; or, by some rule of common law; but *I do not find any resolution, or even opinion*, that such is vested in the vicar or churchwarden, OR EVEN TO GIVE THE VICAR A RIGHT OF PRESIDING. There is indeed a notion that he has a right to preside; but that has taken its rise from *special vestries*; and there the custom, or the Act of Parliament which establishes such vestries, generally nominate him to preside.§ . . . What is THE CONSEQUENCE?||

* But see Coke, Fitzherbert, and Levinz, before, pp. 302, 303. Besides which, the ecclesiastical Law is plain; and this is binding on the clergy, and so might have been cited in that case.

† Strange's Reports, p. 1046. See before, p. 202, note †, for a similar sound constitutional reason. See also before, p. 59.

‡ These last five words appear to be a mistake in the print. Nothing of the sort is found in any of the other reports, nor in the counsel's points as contained in this Report. It might be “or” one of the churchwardens. It does, however, but make the case the stronger if the Minister, together with a churchwarden, is declared not to have the authority now sought to be engrossed by the Minister alone.

§ Compare, after, p. 315, Fortescue's Report on these words. See, however, the Select Vestries Act, 59 Geo. III. cap. 12, which not only does not do this, but expressly directs the majority to choose a chairman,—though the minister is one of the Select Vestry. After, p. 324.

|| Compare pp. 311, 312, before; and see after, pp. 322, and 323, note*.

It is, that *the right is in the assembly itself*; for, if they be an assembly, *all consisting of equals*, and there be no custom, nor rule of law, to direct the adjournment, the right must be in the persons which constitute the assembly.* It is true, inconveniences may arise from this; for it will require as much time and ceremony to settle, whether the assembly shall be adjourned, as for any other question;—an “inconvenience” rather far-fetched, it may be observed, as this very question is raised in the House of Commons, and every other deliberative assembly, every day, and is not found a source of any practical inconvenience. Every Public Meeting appoints its own chairman, as its first step. And it has been shown that many Acts of Parliament bearing on Parish affairs expressly declare this, as to be done.† No one ever heard of any inconvenience therefrom. Lord Hardwicke goes on:—“There might be an inconvenience on the other side, in this case, to say the power is lodged in the vicar; for he might make use of it to influence which churchwarden he thought fit, against the sense of the majority of the parishioners.” As to which, the reader’s attention may be recalled to the just remarks of Bishop Stillingfleet, on the danger of entrusting any such powers to the Minister of any Parish.‡

In the same Report, Mr. Justice Probyn is reported to have said, explicitly, that:—“*The parson is not a constituent part of the assembly*; but it must be very well held without him; and the majority must determine all questions.” And Mr. Justice Lee says:—“There is *no difference as to the precedence* of the parson in voting, above the rest of the parishioners; only this distinction, that the parishioners vote in respect of their assessments, and the parson votes in respect of his freehold: and therefore it *has been said* [even this is put thus doubtingly] he may vote though he pays no assessments.”§

The third Report of the case records the judgment of Lord Hardwicke and the others as follows:—“At the Trial, *no precedent could be found* to satisfy me; and *I do not believe any can be found*. It is of great consequence; but nothing that has been said at the Bar has satisfied me that this is a good adjournment or that *it can in law be valid*. It must be either upon custom

* See before, p. 58.

† See before, pp. 57, 60, 62, and the whole of Chapter IV.

‡ See before, p. 304.

§ Lee’s Cases temp. Hardwicke, pp. 276, 277

or by the Common Law. But the custom is not set forth, and I do not find any such opinion to vest a power in the parson. It may have been a common opinion, but that is not a sufficient ground for me; and that might have arose from *select vestries*, or from a particular custom.* . . . And even supposing the vicar had a power of presiding, it does not follow that he has the power of adjourning." The doubting expressions of Mr. Justice Lee, as to the right of the parson even to be present and vote, are here more plainly expressed than in the last quoted report, though in quite different language. It is clear, therefore, that, in point of fact, he expressed himself thus doubtfully at some length. "The parson *perhaps*," says he, "has a right of *sitting*, from his freehold in the church. But *I do not think that can, any ways, give him a greater right or authority* than any of the other members of the assembly."†

Comment on this case is unnecessary. It is a direct authority of Common Law Principle against the attempts at ecclesiastical encroachment which distinguish modern times; and is simply in strict accordance with, and confirmation of, what have already been proved to be the spirit and the letter of even the true Ecclesiastical authorities themselves.

The force of this case, and of all the proof already given, is but cumulatively strengthened by the solitary case‡ which the imagined supporters, but real degraders, of the authority and influence of the Church, cite in favour of the attempt at assumption by the Minister of domination over Parish Meetings. The latter case occurred in 1819.§

It was a case where, a rector having attempted to take the chair, on the pretence of right, at a Parish Meeting, a Parishioner was moved to the chair, and the motion was carried. The Rector cited this chairman in the Ecclesiastical Court; and a prohibition against the ecclesiastical court proceeding in the matter, was sought in the King's Bench. It is a very remarkable circumstance, that the only authority attempted to be cited against the prohibition issuing (that is, in favour of the alleged right of the Rector) was the form given in Gibson's 'Codex,' already quoted: || a reference which has been shown to bear, in fact, directly the other way. Thus naturally does one illegal

* Compare above, p. 313, Lee's report of these words; and p. 299.

† Fortescue's Reports, p. 172.

‡ See before, p. 294, *note*.

§ Wilson v. M'Math, 3 B. & Ald. 241.

|| Before, p. 299.

attempt fall back upon another illegal attempt in order to support itself. Such is the History and Progress of all Usurpations. The judgment given by the Court of King's Bench is, however, one of the most striking cases of capricious inconsistency to be found in the annals of that court.* It contrasts strongly and humiliatingly with the independence of tone and logical strength which were shown in the case of *Stoughton v. Reynolds*. The court refused the prohibition on the ground that, *because the meeting was held in a church*, it was fit that the ecclesiastical courts alone "should have authority over the order and proceedings of a meeting held in such a place."

Such a decision is absolutely unmeaning.† It is no less inconsistent and novel. The church has been, for many centuries, the usual place where parish meetings have been held.‡ It is the place where those fulfilling secular duties, without even the presence of the Minister, are actually *required* to meet by many Acts of Parliament;—such as the 43 Eliz. c. 2, and the 10 Anne, c. 20; both of which have been already quoted. The very meeting in the case of *Stoughton v. Reynolds*, in which the Court saw and emphatically affirmed the danger of giving the parson too much power, was held in the church. Yet the same Court, in 1819, would, under colour of some mystic and unintelligible doctrine, disguised in the phrase "*ratione loci*," hand it over to the Ecclesiastical Court to determine whether or not ecclesiastical domination is to override every parish! Churchwardens, Overseers, Surveyors, and many other officers, have been, for centuries, always elected in the Church. Church rates, and other rates, are made in the Church. Every day the Court of Queen's Bench grants its *Mandamus* and its prohibition, on this and that matter, in immediate relation to these elections, rates, and other proceedings. All this has been, and is, wrong and illegal, if the novel doctrine of the case in question is right. It is impossible, indeed, that anything more weak or unsustainable than the decision in that case can be conceived. It is, moreover, palpably inconsistent with its own state of facts. The very occasion in question was a meeting touching an *action of ejectment* as to

* See close of *note*, pp. 271, 272.

† The case of *Wenmouth v. Collins*, 2 *Ld. Raymond*, 850, has no sort of analogy. That was a case of assault (see 5 & 6 *Ed. VI. c. 4*); not one of a regular public meeting, held by Common Law. ‡ See before, pp. 53, 54.

lands—that is, an action that can be proceeded with in the Courts of Common Law only. Degge, in his ‘Parson’s Counsellor,’ expressly lays it down that “the spiritual courts have not power to determine the right or property of lands or goods.”* But they clearly have this power, if they are to be allowed to adjudge concerning the “*order and proceedings*” of, and as to who shall have dominant authority in, all Parish Meetings;—in which meetings such matters are, as has been shown throughout these pages, what continually and chiefly come in question; and in which meetings it is always the duty of the Parish officers to have the subject discussed, before they begin any such legal proceedings. The case in question, if Law, would give the Ecclesiastical Courts authority, and the *exclusive* authority, to determine all points touching, or arising out of, every matter ever done in a Parish Vestry,—whether as to choice of officers, Rates, Highways, Actions at Law to defend the Parish rights, or anything else! More conclusive answer than this case thus itself supplies to its own attempt to “make”† such astounding Law, cannot be needed. It will be useful, however, further to illustrate its inconsistency and unsoundness.

Had the case been one touching Church Rates, it would, though unsustainable as Law, still have been able to be understood. The “*ratio loci*” would then, at any rate, have had a colour of meaning. Some have, though erroneously, supposed that the cognizance of matters touching Church Rates is proper for the exclusive jurisdiction of the Ecclesiastical Courts. Thus Watson, who (like all other real authorities) has nothing to say in favour of the parson’s presiding at any Parish meeting, does go so far as to say that “the cognizance of *Rates* made for reparation of churches and churchyards, belongs to the spiritual court; and prohibitions have been often denied.”‡ And it would, indeed, be far more intelligible that, if the jurisdiction of the Ecclesiastical Courts is to prevail on any point, it should do this in what concerns the actual sustaining of the very fabric of the church, than that it should thus be paramount in what concerns the question of who shall fill the chair at a meeting of Parishioners held to determine on an action of ejectment, or on the repair of Highways, etc. etc.; matters that

* Degge, p. 197. See also after, p. 321 note †.

† See before, p. 13.

‡ Watson’s ‘Clergyman’s Law,’ 1725, p. 642. But see next page.

have no possible connection with ecclesiastical concerns. It has been already seen that the Court of King's Bench will interfere, by prohibition, in cases of Churchwardens; and even of Sextons, of Parish Clerks, etc. etc.;—all of these being treated as temporal officers. It is hardly credible, and not a little humiliating, that, when the mere chairmanship of a Parish meeting comes in question, the court which, in 1736, plainly expressed its fear of the parson's having too much influence, should, in 1819, have forgotten itself so far as to confess itself paralyzed; and, in the face of all reason and authority, have done its best to hand over all Parish affairs, without exception, to the *ex-parte* dealing of the Ecclesiastical Courts!

But it has long ago been settled, since as well as before this anomalous case, that the Court of King's Bench will, in fact, maintain Degge's doctrine. The pretence of *ratione loci* is simply futile. Even the question itself of Church Rates is not allowed to be subject to ecclesiastical rule. The Braintree case has settled all doubts on this matter—where any had before existed in the minds of those who had not thoroughly examined the subject. That, too, was a case of the "proceedings of a meeting" held in a Church; and it arose, like the case of *Wilson v. McMath*, above alluded to, out of an application to the Court of Queen's Bench, for a Prohibition to the ecclesiastical courts against their entertaining the question. How shortly and easily would that long and troublous case have been settled, had the case of *Wilson v. McMath* been Law! It was, indeed, there said by the defendant, that the plaintiffs "were bound to show that the court sought to be prohibited had no jurisdiction." But this was unheeded. The House of Lords confirmed the prohibition against the right and power of the ecclesiastical Courts to adjudicate in the matter. This case overrules, therefore, the extraordinary and unsupported novelty attempted to be set up in the case of *Wilson v. McMath*; in which case the Court did not pretend to cite any authorities, or to give any reasons; but merely bowed before the shadow of the "*locus in quo*:"—stood aghast, utterly paralyzed "*ratione loci*," because the meeting was held in a Church! The Braintree case was itself a case arising out of the proceedings of a Parish Meeting held in a Church; and proceedings, moreover, on a matter relating solely to that *Place*; for it was the case of a Church Rate. Were *Wilson v. McMath* of any authority, as Law, this would

have settled the question, and the prohibition would have been successfully resisted in that celebrated case. But no one connected with that case ventured to risk his reputation by resting on so shallow a ground;—though that ground, if sustainable at all, would have been much more applicable there than it was in the case of *Wilson v. McMath*. The latter case was quietly, but wisely, disregarded and set aside in all the Judgments of all the Courts on the Braintree Case.

Without saying more on a point so plain, it is sufficient to quote the unanimous language of all the Judges of England, as recorded and approved by Lord Coke. “When,” they wisely remark, “the ecclesiastical courts will deal with matters of temporal contracts [concern], *coloured with pretended ecclesiastical matter*, we ought to prohibit them.” And again:—“Matters *incident*, that fall out to be mere temporal, are to be dealt withal in the temporal, and not in the ecclesiastical court.” The question of Chairman of a Parish meeting is, beyond a doubt, a “mere temporal” matter:—far more so than the office of Sexton or Parish Clerk can be.* Not even the “colour of pretended ecclesiastical matter” can be got out of the fact of such meeting happening to be held, according to ancient right, Law, and custom, within the walls of a church. That fact is but an immaterial “matter incident.” Well may the same judges add, in the same record, that “the temporal Courts must always have an eye, that the ecclesiastical jurisdiction usurp not upon the temporal.”† This eye was certainly not open when the Court of King’s Bench abdicated its functions in 1819.

Let us now see how the *ex-parte* tribunal of the ecclesiastical court, to which the liberties of Parishes were thus unlawfully handed over, dealt with the matter thus wrongfully referred to

* See before, pp. 195, 199, *notes*, that these are held to be temporal offices, of which the Common Law Courts claim cognizance.

† Coke, Second Institute, pp. 609, 613, 615. The whole of the Answers of the Judges there, from p. 601 to p. 618, are well worthy of the most attentive perusal and study. It is on a later page of the same tractate that the true statesmanship and enlightened patriotism of Coke,—to whom the liberties of Englishmen owe so much,—are shown in the following very striking passage:—“It was said, that this tended *in præjudicium ecclesiasticæ libertatis*. The Parliament thereunto answered (WHICH IS WORTHY TO BE WRITTEN IN LETTERS OF GOLD), *Nec debet dici in præjudicium Ecclesiasticæ libertatis, quod pro Rege et Republica necessarium invenitur*.”—2nd Inst. p. 625.

it.* The judgment given by that court cannot fail to recall a passage in Ayliffe, where he speaks of some who “sit as judges in our ecclesiastical courts, and determine lawsuits, without any knowledge of the Law.”† At the same time, such unequivocal mis-statements of fact are found in it, that want of knowledge of the Law will not alone serve as an excuse,—poor as the latter would be. Biassed as the judgment of an ecclesiastical court will necessarily be, on a matter touching the aggrandizement of clerical authority and control, an *ex parte* statement is rarely marked with so much disingenuousness, mis-statement, and illogicalness, as are here found. It does but add, however, another illustration of the conscious illegality of the pretensions attempted to be set up, when it is seen that it is only by such disingenuousness, mis-statement, and illogicalness that even any colour of a case can be pretended to be made out.

It will be clear, at the outset, that when the matter was in the hands of the ecclesiastical court, the ecclesiastical law was binding; and ought to have been referred to and abided by as the guide and rule of the decision. What that law is, as bearing on this matter, has already been shown. It will strike every candid searcher after truth as extraordinary, that all reference to this Law is carefully avoided by the ecclesiastical Judge, in dealing with this case. Such however is the fact. That reference would at once have destroyed the pretence which this judgment seeks to sustain.

It would be impossible to notice all the mis-statements and illogicalness that occur in this judgment. A few principal points only can be taken. After an assumption of universality and reasonableness, both equally unfounded, the “inconvenience” is dwelt upon that would result if the Minister were not to take the chair. It will hardly be believed that such a preposterous ground could be urged. The propounding it is conclusive proof that the absence of any real ground in support of the pretensions set up, was strongly felt. Lord Hardwicke had answered this eighty years before. The practice of every Public meeting daily answers it.‡

Following this, there come, in a few lines, as many mis-statements, perversions, and unwarranted assumptions, of fact, as are well able to be crowded into so short a space.

* 3 B. & Ald. 244.

† Ayliffe's ‘Parergon,’ p. 186.

‡ See before, p. 314, and *notes*.

"The minister," it is said, "is *not*, in consideration of law, a mere individual of vestry, as has been contended: nor is he in any instance so described. On the contrary, he is always described as the first, and as an integral part of the parish. The form of citing a parish proves this position, namely, as 'the *minister*, churchwardens, and parishioners,' he being specially named:—such is the legal description of a parish in all formal processes. So far, therefore, from being a mere individual, the proper description of a parish, in vestry assembled, is, 'the minister, churchwardens, and parishioners in Vestry assembled.'"

It has been already seen to have been expressly laid down by distinguished judges, that the minister is *but a mere individual* of the Vestry; that all present are on *an equal foot*; that the minister is "*not* an integral part of the parish;"* and that "Parishes were instituted for the ease and benefit of the people, and not of the parson."† It is not true,—it is the reverse of the fact,—that the proper name of a Parish is "the minister, churchwardens, and parishioners." On the contrary, it has been already shown that the churchwardens may sue the minister himself as a "mere individual," and on behalf of the Parish. Nay, the Court of Queen's Bench will issue a prohibition against the parson taking any proceeding, even in the spiritual court, in respect to things though annexed to the church itself.‡ On the other hand, it is the Churchwardens, and not the Parson—either alone or with them—who must sue even for damage done to seats affixed to the church. It is they, and not the Parson, who alone can sue for any wrong or injury done to any other property belonging to the Parish.§ Moreover than this, the fact has been shown to be, that they

* Before, p. 314. See also *Mawly v. Barbet*, 2 Esp. 689.

† See before, p. 71.

‡ 1 Roll. Ab. 393, 625; 1 Roll. Rep. 57; Co. Litt. 18*b*; 3rd Inst. 202; *Starky v. Watlington*, 2 Salk. 547. Even in the case of Books taken out of a Library left solely for the use of the Minister, he cannot sue in his own name: see 7 Anne, c. 14, s. 2. It is unnecessary to illustrate the matter further, since there is no point more clear than that the minister is *not* an integral part either of the Vestry or the Parish. See before, p. 195 *note*. It must not be forgotten that, so long ago as 31 Edw. I., there was a law passed "*Ne rector prosternat arbores in cimiterio*."

§ See the case already cited, Year Book, 11 Henry IV. fo. 12, before, p. 297; also 8 Henry VII. fo. 12. Many cases on the matter are also collected in Watson's 'Clergyman's Law,' pp. 382, 390. See before, p. 312, *note* †.

must, in their proceedings, describe the damage and loss as done and suffered simply to or by "the inhabitants of the said parish." The form and course of legal proceedings therefore distinctly *disprove*, instead of sustaining, the assertions that the minister is an integral part of the parish, and that the legal description of the Parish includes him. Thus also, when any suit or proceeding or indictment is brought against a Parish, it is described as against "the inhabitants of the parish of —." What is more,—in all the numerous Statutes cited in the first chapter, the minister is never once alluded to. "The provost," "the provost and four," "the constable," or "the churchwardens," are often named: never, "the minister." Throughout the *Inquisitiones Nonarum*, those invaluable records of Parish Proceedings in the fourteenth and fifteenth centuries, the minister remains unnoticed,—except for the lay parishioners to give their independent return, unaffected by his presence (much less presidency), as to the value of his living, etc. The universal experience of the land proves that no one, except this ecclesiastical judge, ever dreamed of the minister being an "integral part of the parish,"—even if he has, "*perhaps*," a "right of sitting" in the Vestry meeting.* A Vestry and its proceedings are, unquestionably and indisputably, just as good and valid in his absence as in his presence; which they of course could not be if he formed an integral part of it.

The ecclesiastical judge next proceeds to mis-state, in order to evade, the point of *Stoughton v. Reynolds*;—it being impossible otherwise to get over the authority and force of that case. It is pretended that it did not at all turn on the right to preside:—the real facts as to which have been already seen. It is curious,—and an amusing illustration of Ayliffe's remark as to the want of a knowledge of the Law by some ecclesiastical judges,—that the ecclesiastical judge in this case, though he professes to quote the reported case of *Stoughton v. Reynolds* from the identical Reports already cited here, does not even quote them correctly! No wonder that a judge who will not take the trouble to quote correctly from printed accessible reports of an important case, should omit all research into the more pains-needing inquiry into ecclesiastical law bearing on the matter; and that he should, therefore, give an unsound and erroneous judgment. The most important passage

* See before, p. 315.

professed to be quoted, is altogether incorrectly quoted; while it is untruly intimated that what is quoted is all that is stated in that case bearing on the subject; and, as untruly, that what was thus stated in that case was “mere *obiter dictum* upon a point *not then requiring decision, nor even arising in argument.*”^{*} The proof of the direct and inexcusable untruth of this has been given in previous pages.

The judgment then cites what it admits to be the solitary authority in favour of the pretensions sought to be established. That authority is the passage from Dean Prideaux already quoted and examined; and which, it has been shown, tells clearly the other way, both by reason of the actual bearing of the authorities cited by Prideaux, and by reason of the specific limitation placed in it, by himself, with regard to the point in question.

Two Statutes are next referred to. One of these is the General Vestries Act of 58 Geo. III. cap. 69; which alludes, in very slipshod phrase, to cases “where the rector, or vicar, or perpetual curate, shall not be present.” Though carelessly worded, this phrase neither asserts nor enacts anything; and it can in no way affect the common right, nor the Law as it stands. It is no authority whatever for the unlawful practice; and simply gives an example of the erroneous recitals, as they may be called, contained in Acts of Parliament, of which the lamentable decay of constitutional and legal knowledge and grasp of mind in the Legislature has, of late years, enabled there to be too many instances.† But, to quote such words, so found, as an authority, is an absurdity. The “giving powers by implication,” would indeed, in the words of Lord

^{*} 3 B. & Ald. 247. Again:—“In neither [report] is it stated that the right of the minister to preside, made any part of the argument.” But see before, pp. 311–315. Such mis-statements, from the mouth of the ecclesiastical judge, show a very strongly-felt consciousness of the weakness of the case he was seeking to sustain.

† See Lord John Russell, as before quoted, p. 213, *note*. See also, p. 220, *note* ^{*}; and the same thing, forcibly put, in S. T. Coleridge’s ‘Statesman’s Manual,’ 1816; in which he hopes for the time “when education has disciplined the minds of our gentry for austerer study” (p. xxxii.); and well says that “one preliminary to an efficient education of the labouring classes, is the recurrence to a *more manly discipline of the intellect* on the part of the learned themselves; in short, a *thorough re-casting of the moulds* in which the minds of our Gentry, the characters of our future Land-owners, Magistrates and Senators are to receive their shape and fashion.”—P. 52.

Campbell,* be “a strange mode of legislation;” the attempt to set up which, no court would listen to. All this Act really does, is to prove that the minister is *not* an integral part of the Vestry, and that it is indifferent whether he be present or absent. It is plain, indeed, from the mode in which the ecclesiastical judge refers to this Act, that he feels that it weakens instead of sustaining his case. The other Act is the Select Vestries Act of 59 Geo. III. c. 12. The judge finds it difficult to explain away, though he attempts it, the fact that in the latter Act, passed the very next year *after* the one last named, though the minister is specifically included as to be one of the Select Vestry, nothing whatever is said or implied about the minister being chairman. On the contrary, though it is said that he shall be on the Select Vestry (which it would not be necessary to say were he, of right, even a member,—much more an “integral part”) it goes on to say, not by any inferential words, but in positive terms, and in contempt of Gibson’s form, that “at every meeting, a *chairman* shall be appointed *by the majority of members present*, who shall preside therein.”† And his becomes the more striking because the very same Act not heeding the mystic “*ratione loci*”) says this Select Vestry shall meet in the church.‡

The same ecclesiastical judge is singularly infelicitous in another respect. In one place§ he tries to make it out that poor-relief is a *quasi-ecclesiastical* matter :||—and that therefore the minister ought to preside at Vestries about that,—the Acts of 43 Elizabeth and of 3 William and Mary to the contrary notwithstanding. In another place,¶ he seeks to evade the obvious force of 59 Geo. III. c. 12, which tells so strongly against the claim of ecclesiastical domination which he is attempting to bolster up, on the ground that poor-relief is a *temporal* matter! These arguments are both of them as plainly inconsistent with the whole case attempted to be made out, as each of them is inconsistent with the other.

* R. v. Greene, 16 Jurist, 663.

† See before, p. 314. The 3 & 4 Wm. IV. c. 90, may also be quoted; which explicitly recognizes the election of chairman by ratepayers,—fearless of the “inconvenience.” But very many other examples might be added from other Acts of Parliament.

‡ See before, p. 316.

§ Pp. 246, 247.

|| He is, however, even here, entirely erroneous, as usual, in his *facts*; as will be seen by the numerous quotations given in this work. See *note* to p. 308; also pp. 28–30, 95 and *note*.

¶ P. 249.

Having thus shown the value of the solitary case on which the pretension of the Minister to dominate in the affairs of parishes is attempted to be rested, it would be useless to follow the subject at much greater length,—as might, however, readily be done. It is equally clear, from the *absence* of the assertion of this pretended right by even any real ecclesiastical authority; from the emphatic *prohibition* of the exercise of any such function by all the highest ecclesiastical authorities themselves; from the nature and purport of the Constitutions referred to in the solitary authority (that of Prideaux) which would set up even a single and restricted instance—very different from what is set up in our day—of the exercise of such a function; from the positive authorities, on Common Law Principles, to the contrary; and from the actual character of the solitary case in which these pretensions have been attempted to be sustained;—that the claim of the Minister to precedency in the Parish, or to fill the chair at Parish meetings, as matter of right, and without the special choice, on the occasion, by the Parishioners, is not only altogether unwarranted, but is absolutely illegal; that it is, in every respect, and on every ground, unlawful, instead of the Law.

In addition to these numerous and varied proofs and illustrations of the *unlawfulness*, both by Ecclesiastical and Common Law, of the Minister taking the Chair at Parish meetings, it may not be amiss to call attention to the palpable inconsistency of the modern pretence of claim set up in that behalf, with the position of the Minister in respect to the Churchwardens and Parishioners, as illustrated by the “*Injunctions*” of the founders of the Reformation in England, and by the “*Articles of Visitation*” which the Bishops, if they fulfil their duty, are bound to issue and have answered every year. These Articles of Visitation have been already fully alluded to, and quoted.*

* With regard to these Injunctions and Articles, it may be well to state that both might have been much more fully quoted to the same effect as has been already done in pp. 93–96, and *notes*; while many more Articles, from different sources, might have been added. “*Injunctions*” were issued in the time of Hen. VIII., to precisely the same effect as those issued by Edward VI. and Elizabeth, quoted p. 95, (see Burnett’s Hist. of the Reformation, vol. i., Records, pp. 160–163); though these are not usually treated as so solemnly issued, and of such mark and authority in the History of the Reformation in England, as the Injunctions of Edward and Elizabeth. Nor are they so full; though, on the two points of the poor and of scholars, they happen to be nearly the same. The Articles of Mountaigu, Bishop of Nor-

Nor is the inconsistency less striking when the cases of combined or separated parishes, under Church-building Acts and otherwise, are remembered. What can be more preposterous or indecent than the idea of the Minister of one particular Church fabric, within a parish that has several within it, presuming to claim a right to preside at the meetings of the Body of the laymen of the whole place, most of whom are entirely disconnected with his church, and have and support separate District Churches of their own, and who belong to the same parish only in respect to affairs purely secular? Yet, under the unlawful system of encroachment and usurpation that some, in our day, subserviently submit to, the Minister of such individual church would, and some of them do, set up a claim to nominate one of the secular churchwardens for the whole of the secular Parish, and to thrust himself into the chair at all the meetings of the whole Body of the Laymen, for secular Parish affairs! Can arrogance go further? This amounts indeed, to a *reductio ad absurdum* of the pretensions unlawfully set up; while it affords a painful comment upon the nature and result of ecclesiastical encroachments and usurpation, and how opposite these are to the simplicity of Christianity, or to what is becoming in a Minister of religion. The transparent cover of religious headship, where itself reduced to an indiscernible shadow, is made the pretence for domination in *temporal* affairs! The mockery even of satire could go no further than this.

I have reserved till the last one authority; because it serves to explain how it has happened that the minister has gradually got, in many places, to be let engross a position to which he has not only no legal right or claim, but his engrossing of

wich, quoted on p. 94, are well worthy of attention, though not included in Sparrow. It will be found that these Articles go so far as to require the Churchwardens to present whether the Minister meddles in secular affairs, even in what concerns his own household; these, say the Articles, being "fitting for his wife or servants, not himself, who hath had imposition of episcopal hands, and to meddle with divine employments." (Articles, Tit. III. art. 9. I quote the original edition of 1638.) While such illustrations abundantly demonstrate the inconsistency (added to the above-proved illegality) of the attempt to set up a claim in the Minister to assume precedency, and to take the chair, at Parish meetings, it may not be amiss to recall attention to the rebuke which the Court of Queen's Bench justly gave, a short time ago, to a Minister who had refused to give those explanations to the Parishioners in Vestry, which were due to them. (See *ex parte* Doveton, Q. B. 12 Nov. 1855, referred to before, p. 51, *note*.)

which is directly contrary to the plain letter and spirit of the Ecclesiastical law, as well as to the whole letter and spirit of the Common Law.

Lambard is a writer of great authority on all offices connected with the Parish.* He has a special chapter on "the Dutie of church-ministers," following (not leading) those on the duties of Constables, Borsholders, Tythingmen, and other Parish Officers. Entirely innocent, like every other real authority, of any knowledge of the Minister as an integral part of the Parish, or as pretending to precedency in Parish Meetings;—treating the Parish throughout in its true character of a secular Institution and integral part of the Hundred;—he thus speaks of him:—"The *later Lawes*, having imployment of many to make, hath *borrowed* some use [mark the phrase], in a few easie matters, of spiritual Ministers, chiefly for the helpe and readinesse of their pen, which, in many parishes, few or none besides they can serve withall."† He then enumerates what the use is that has been thus "*borrowed*" by these "*later Lawes*" of the minister in Parish matters. It hardly need be repeated that presiding at Parish Meetings is not one. The principal use thus borrowed is the keeping of a few Registries—all more or less immediately connected with his regular duties as Minister.

It will readily be understood that, as the minister was thus called on to keep certain registries, because he could always write, he would frequently be present at the Vestry Meetings.‡

* 'The Duties of Constables, Borsholders, Tythingmen, and such other low and lay Ministers of the Peace; whereunto be adjoynd the several offices of Church Ministers, and Churchwardens, and Overseers of the Poor, Surveyors of the Highwaies, and Distributors of the Provision against noisome Fowle and Vermine.' By William Lambard, ed. 1614.

† Lambard, as above, p. 67, and see before, p. 187. A "use" of similar nature, in the city of London, has led to a perversion not unlike the one under present consideration. The City has always claimed, rightly, its independent customs; and that, when any of these came in question in a Court of Law, the declaration of such custom, by the word of mouth of the Recorder, as the *mouth-piece of the corporation*, shall be received as final evidence of what the custom is. But this is only as *such mouth-piece*. The Corporation themselves properly determine the fact. The Recorder has not, rightfully, any power to try or adjudge the custom. Yet to such a usurpation has this "laudable practice" at length degenerated. Compare *Plumer v. Bentham*, Burrow, 248, with any of the later cases.

‡ It is to be noted that the entries in the registry were to be made *once a week*, in the presence of the Churchwardens and others. This practically

Nothing would be more natural than that a minister who made himself beloved and esteemed, would—even from the mechanical circumstance of his being at the table with books and pen and ink—be often asked to fill the chair. Put into it thus, at the free will and request of the parishioners, he would discharge the duty in a very different spirit, and be regarded in a very different light, from one who assumes a right of precedence independent of the Parishioners, and presumes to engross the chair without any reference to their wishes or feelings.

The language of Lambard is exceedingly instructive in every way. It not only proves the want of any such precedency as is now attempted to be set up, but it clearly shows the simple origin of the fact of the minister being so much as present at the time when the secular affairs of Parishes were being discussed. That presence was very far from being due to precedence or authority. It was simply incidental. It was simply that the service of some known person who could write, should be “borrowed” “in a few easy matters.” It is well worth notice that the parishioners themselves have always been so justly jealous of ecclesiastical domination, that it is but rarely that the minister has been allowed even to enter the records of the Parish Meetings in the Minute Books. It will be found, upon reference to ancient Parish Minute Books, that entries continually occur of persons appointed by the Parishioners to “give constant attendance at all Parish conventions; to write all such orders as shall be then and there made; and to engross the same fair in the Towne book appointed for that purpose.”* And this, although the minister all the time had the “use” “borrowed” of him “in a few easy matters,” to keep the registries of certain testimonials† and of all christenings, deaths, and marriages. Not even were these registries allowed to be made by him, except in the presence of the Churchwardens.‡

became thus a Vestry meeting. For the very same reason, too,—that he could always write,—he would no doubt occasionally be asked to enter the Minutes of the Proceedings of Vestry,—but not as Chairman. Probably there was commonly no regular system of Chairmanship at all. The Constable and Churchwardens were head officers, and had their natural precedency unquestioned.

* Minute of 5th January, 1709, of a Convention (Vestry Meeting) of the Parishioners of Ardley in the county of Herts. See before, p. 204.

† These Registries of testimonials are enumerated by Lambard; but they have long become obsolete.

‡ See before, p. 187.

It has been necessary to treat thus at length on the subject of the position of the Minister in respect to the Parish, on account of the unspeakably mischievous effects which have followed from the modern attempt to set up ecclesiastical domination in the secular affairs transacted by Parish Vestries. Universal experience witnesses to these mischiefs. The most common sense of decency recognizes the impropriety of the practice. The best and worthiest ministers of the Church are fully alive to the evils of the assumption ; to its inconsistency with their profession, and with what ought to be their practice ; and to its necessary tendency to bring contempt upon the Church. But many of them have let their good feeling and judgment be overruled by the suggestion, that they are called on to vindicate what are represented as the rights and privileges of the Church and of their own successors. It has been now shown that there can, on this point, be no greater mistake. The practice has been here proved to be as antagonistic to the Law of the Church, as it is to the Common and Statute Law of the Land. It has no warrant of authority, of reason, or of principle. It is directly in the teeth of all these. Beyond this, it places the ministers of the Church in a false position, and exposes the ministry itself of religion to just and necessary contempt. It causes men to look at the holding and teaching of a certain form of faith, as identical with a spirit and practice of domination in secular affairs ; a spirit and practice which are felt to be repugnant alike to common honesty, and to the most ordinary sense of independence and of self-respect.

For those who, to save themselves the trouble of research into a matter of so much importance, have been content to copy from one another the *ex parte* opinion given in such a case as *Wilson v. McMath*, there can be no excuse. The weakness and unsustainability of that case are apparent on its face. The Law of England reaps no honour, when those who assume the place of guides and expounders, leave unheeded all reference to Principle or to real authority, and blindly copy from one another the mere note of a case that violates both,* in matters that affect the practice and the welfare of every part of the country, and the whole moral tone and temper of men in their local communities. Such has been done in this instance.

But, however much the culpable negligence of those who

* See before, p. 195.

have written upon Parish Law, may, of late years, have resulted in dissuading men from contesting this important question, and may have induced Parish Vestries to submit to so wholly unwarranted, unlawful, and indecent an usurpation, rather than involve themselves in litigation,—and so certainly has disgusted many of the best men from going near such meetings, or made the latter be regarded as no other than ecclesiastical affairs; to the great injury, in either case, of the Public Interests and the Common Welfare,—it has now been demonstrated, that the attempt to set up any pretensions in the minister of a Parish to the claim of precedence in the Parish, or to the right to engross the chair at meetings of the Parishioners held at any time, for any purpose, or in any place, is altogether unsustainable, illegal, and a direct violation both of the law of the Church and of the Land. Such an attempt, by whomsoever, and how insidiously soever, sought to be engrafted on our system of parochial management, is but a part of the great ecclesiastical conspiracy, which has grown up chiefly since the Reformation, to raise the legal condition of the established Church, from that of a Body subordinate and truly ministrant to the State—according to the conditions of its endowment—into a legal position of independent, co-ordinate, and even dominant authority.

CHAPTER VII.

SUBJECT MATTERS OF PARISH ACTION.

THE general characteristics of the Parish, as an integral part of the State, and the Institution whose complete well-working is the most vital thing to the internal welfare of the State, have been shown. The Officers and Committees usually appointed to carry out the business of the Parish, together with the chief characteristics of each, have been passed in review; and such particulars and authorities have been given as will enable the practical man to follow up any point of detail, either in practice or question, as the case for it may arise. In the present chapter, I propose to lay before those who, whether officers or other parishioners, are alive to the responsibility of their position as citizens, and are desirous of fulfilling their duties to their neighbours, a general view of the ordinary matters of Parish action; together with such suggestions as may enable the purpose of such action to be in each case best reached, and the dangers that threaten the attainment of that purpose to be understood, and so warded off.

What are included within this Chapter must not be understood as defining the absolute limits of Parish action. It has already been shown that it is the invaluable characteristic of the Common Law of England that it consists in *Principles*, which are adaptable to circumstances as they arise. It does not know finality or procrusteanism. These are the offspring only of the pedant and the doctrinaire; who have sought indeed to engraft them on our Statute Law, and have succeeded too well in that mischievous object; but who have not yet succeeded in rooting out all the landmarks of the Common Law; though their attempts in this direction make the thorough understanding of those Landmarks, and of the Principles which are identified with them, the more necessary.

What are here included, are the more usual forms in which Parish action takes place; while the numerous authentic, and hitherto (with very few exceptions) unpublished, practical illustrations that will be given of the forms of action that have been actually taken, at different times and in different places, as circumstances have arisen, will give so complete a view of the working and adaptability of the Institution of the Parish, as to leave no person of ordinary intelligence without a clear notion of the course which, under whatever circumstances may arise, may and ought to be taken, in accordance with those Principles which are embodied in and sustained by the Common Law of England.

SECTION I.

ROADS, PATHS, DRAINAGE, AND NUISANCES.

THERE is no duty which surpasses in importance, among the business of the Parish, the maintaining its Highways in such condition that they shall be fit for the passage of all men; and the taking care that nothing is let be done, on or near them, which shall make the passing over them dangerous, offensive, or inconvenient. It is not only to the repair of the roads themselves, but to everything that affects the safety, wholesomeness, and comfort of the passage along them, that attention is bound to be given.

This was enforced centuries ago, in the habitual practice under the Common Law. It was recognized by Statutes which did but re-declare the Common Law duty of taking care that there should be neither dyke, tree, nor bush, whereby any man might lurk to do hurt to passengers, within two hundred feet of either side of any way;* and that, "where common nuisances are in highways, or where ditches or watercourses adjoining unto highways are not scoured and dressed, the surveyors shall see the same reformed, and the offenders punished, according to law."†

The Law of England as regards Highways and the responsibility for them, does not, it must be well remembered, rest on any Statutes, old or new, but on the Common Law.‡ It has been well observed that "the Common Law relating to Highways is nowhere repealed. It exists in its full extent, and forms a most important groundwork for the provisions of the Legislature. Without a knowledge of the former, an acquaintance with the latter will infallibly lead to error; for, in point of fact, the most material parts of the Law upon this subject (I might say all its *principles*) are derived from the *lex non scripta* [the Common Law]. The Acts of Parliament, both Highway and

* 13 Edw. I., St. 2 of Winchester.

† 13 & 14 Car. II. c. 6, s. 3.

‡ Attention is recalled to what has been already said on the real value of Statutes in such cases, pp. 10, 134, 228, 258, etc.

Turnpike, are only accumulative. In many respects, they are merely declaratory of the Common Law; and in a great measure, the penalties imposed by them are additional to, but do not annul, those to which the offenders were previously liable. And it may not unfrequently happen, that the original process by indictment will be preferable to the summary proceeding provided for by Statute. To be possessed, therefore, of the Acts of Parliament alone (however carefully arranged) is to purchase the assistance of a guide who is himself in ignorance of the way, and who cannot fail to mislead. The Statutes must be illustrated by the Common Law; while the deficiencies in the latter are supplied by the former.”*

The Common Law liability of the Parish, and therefore the duty of the Surveyors, to repair, and keep in a state fit for convenient use, all ways within it to the use of which the public has a right, is a liability which cannot be made more extensive by any Statute. All that any Statute can do, is to make declaratory suggestions as to modes of machinery for fulfilling that liability under special circumstances. The Common Law liability in this, as in many other cases, stretches beyond the purview of any Act of Parliament. Thus, though a highway shall have been changed into a turnpike road by Act of Parliament, if this turnpike is not kept in repair, the parish is still liable to indictment.†

The distinction between a Highway and a Turnpike Road is important, though often lost sight of. A Turnpike Road is that in which a special right exists, accompanied by a special obligation of repair; and which is supported by special contributions, taken in the shape of toll.‡ A Highway is a Common Right, and implies a common obligation, and is supported by common contributions.

Some part of the Boundary of Parishes usually runs in the middle of Highways. In such case, the Parish on each side has to repair up to the middle of the same road. The incon-

* Wellbeloved on Highways, preface, p. vi.

† See 1 Lord Raymond, 725; *Rex v. St. George's, Hanover Square*, 3 Campbell, 222; *Rex v. Oxfordshire*, 4 Barnewall and Cresswell, 194; *Rex v. Netherthong*, 2 Barnewall and Alderson, 179; *R. v. Lordsmere*, 15 Q. B. 689; *R. v. Brightside Bierlow*, 13 Q. B. 933. See also 2 Lewin, C. C. 193.

‡ Under special circumstances, aid is granted to some Turnpike Roads out of the Highway Rates. See 4 & 5 Vict. c. 59; which has been continued from time to time until 1st Oct. 1860, by 17 & 18 Vict. c. 52.

venience of such a proceeding is so obvious, that there is probably hardly a parish which has not in its chest some agreements with adjoining Parishes, by which it is appointed that, instead of each mending the entire longitudinal half, each shall mend the whole width for a certain distance. Such arrangements are so plainly beneficial, that the making of them has become expressly suggested in the later Statutes on Highways. The 58th section of the present Highway Act (5 & 6 Wm. IV. c. 50) does little more than state, and so recommend, the old and frequent Common Law and Practice on this matter; adding, however, a means by which, if one parish shall be disposed to be unreasonable, the end shall, nevertheless, be accomplished. The means thus devised are, however, neither so constitutional nor satisfactory as could be wished.

With respect to Bridges, the repair of them does not fall upon the Parish. The origin of this is, no doubt, the fact that streams and brooks are very often the Boundary-lines of Parishes; whence the Bridge crossing such stream cannot be said to be in either Parish. The Common Law is clear, that "of common right, the whole county must repair" all bridges,* unless the obligation can be specifically shown to have always lain elsewhere. An Act, already alluded to,† commonly called "the Statute of Bridges," was but declaratory of the Common Law. It remains the law to this day.‡ The County is also bound to repair the Highways to the extent of three hundred feet on each side of the Bridge; and has, for that purpose, the same powers as the Parish has for the repair of other Highways.

The Surveyors are bound to keep in repair all the other Public ways within the Parish. Very much will always depend on the circumstances of each Parish. What will be a good road in a farm district, may be quite unsuitable in a suburb or town. It is always cheaper, however, to keep the roads in good condition than in bad. To keep the roads well, requires but attention, and the application of a few simple rules. If, for instance, a road, however much "metal" be put on it, is allowed to soak

* Coke, 2 Inst. 701.

† 22 Hen. VIII. c. 5. See before, p. 106.

‡ The Act 43 Geo. III. c. 59, is the only Act that practically affects the liability. Section 5 of that Act, made it necessary that bridges *newly built* should be approved by the County Surveyor in order to make the County liable. This does not extend to the repair, or even rebuilding, of bridges older than 1803. *R. v. Wilts*, 1 Salkeld, 359; *R. v. Lancashire*, 2 B. and Ad. 813; *R. v. Devonshire*, 5 B. and Ad. 383.

with wet, ether from below or above, it soon becomes rotten. Convenient traffic on it, for man or vehicle, is thus hindered; and it gets rapidly worse and worse. To prevent this, permanently and effectually, it is necessary that it shall be made of a material that will become well bound and compactly hard, and of a shape that will throw off the wet; that it shall not be let get into hollows, wherein the wet may lodge; that unnecessary wet shall not be let drop on it; nor impediments exist to the free action of drying winds and sunshine over it. Every road should be made on a regular, though gradual and slight, rise towards the centre; which should fall each way: and every break in the crown of this arch should be instantly repaired. The sides should be so made and kept as to drain off all wet quickly. But on these things, like all other practical ones, no arbitrary rule can be laid down. A road in a flat country will need to have more rise in the middle than a road in hilly or even slightly rolling country.*

Economy, as well as convenience, again, dictate that the make and repair of the road should be done with a material which is hard and tough, and which thus binds thoroughly; not with one which either binds with difficulty, or is brittle, or is soft and easily cut up when bound.† Using the material, be it what it may, in the state of rounded pebbles, should always be avoided. These will never bind. They will pound up and make a disagreeable grit. To bind well, they must be broken with an angular fracture. The smaller, within reason,‡ this material is thus broken, the better; and with the less waste and greater firmness and durability it will bind. Large stones should never be allowed to protrude themselves from the surface of the road. The material must be equal in size, and thoroughly compacted. To effect this, it ought always to be well rolled before it is let be used for traffic; and, until thoroughly compacted, it should be well attended to daily, and all ruts made and material scattered be raked over and again rolled.

* A rise, in the centre, of from four to six inches, in a road thirty feet wide, will commonly be enough.

† A notion is sometimes heard expressed, that a little loam with the gravel of which some country roads are made, helps to bind. The fact is, however, that no true *bind* can take place, except by the interlocking of the angles of well broken materials. Any loam or earthy matter *draws in the wet*, which is entirely incompatible with a good road.

‡ Broken to a two-inch gauge is a good size: but never larger.

The surface must be made to *throw off* the water,—not absorb it; though, of course, to get it thus compacted at first, a damp state is best, because the body of the new materials thus works into a mass with the former bed of the road the more readily. There should, besides this, be a sufficient but not too great thickness of the material. The road will, however, be much harder and more durable by having several thin layers, each well worked in, than by putting on it, as is often done, one or two thick layers. Excess of material is mere waste. It adds nothing to the quality or durability of the road. What is needed is, to form a continuous unbroken crust over the whole traffic surface of the road. A properly shaped road, once well made of such material and in such manner, and with free course to the wind over it, will last for a length of time of which those can have no idea who have been accustomed to spend money in slovenly patchwork, with any rubbish that comes to hand.* These methods of the truest economy are, however, often opposed, under plea of economy. That sort of education, so rife in our day, which boasts itself of reading and writing and a rote smattering of the jargon of unnumbered sciences, neglects to teach the simple, and every day applicable, things and principles which would enable men to know how to discharge their practical duties as citizens. So we boast of our “Education,” and it becomes but a help to centralization to find pretexts for stepping in to do what, under a true education, men would always know best how to do for themselves, and would consider it a dishonour to be unable to do efficiently.

From the conditions needing attention in order that the Highways shall be kept in a sound state, other matters, of great importance to the public health and comfort, immediately arise.

Every highway must, in order to throw off the wet, have

* Country roads often cost much because they are made too wide. Twenty feet wide is quite wide enough for these. (See 5 & 6 Wm. IV. c. 50, s. 80.) And they look far better, too, if the greensward is let grow at the sides, where greater width than this is laid out; this sward being kept well trimmed, and its edges evenly cut. This done once a year, at the time the channels are cleared out, will keep the whole in good order. It is always desirable not to let one road enter another at a sharper turn than a right angle, if it can be avoided. An acute turn causes the wheels to out up the road very much. If the traffic part of one road be made to enter that of the other at right angles, there is the least possible amount of strain and wear on horses, carriages, and roads, on turning to *either side*.

side-channels. Else, the roads will be soon flooded and rotten. For the side-channels to carry off the water, as well as to prevent immediate soakage, the roads must be occasionally scraped. In scraping, the heaps of mud must be kept clear of the side-channels; or that scraping will only make mischief, instead of hindering it. The substance of the surface of the side-channels should never be such as will easily wash up. If it do, there will be pools, instead of a flowing off of the water; besides which, there will be a perpetual choking of gratings and of all passages of water. These channels must always be kept clear, and should be especially looked to after every storm.

Unless what is gathered in the side-channels be clearly carried off, a nuisance will arise to the public from the very conditions provided in order to secure highways in a good state. Consequently, it forms an immediate and inseparable part of the management and keeping of the highways,—*first*, that the material of the side-channels be sound, well compacted, and hard, so that it will not easily either soak through or wash away; *next*, that all neighbouring ditches, watercourses, etc., and their “Shores” or Banks, be kept in good condition, and well scoured, and so always clear and unfouled.* And, as the very existence of channels and ditches affords means, without watchful care, for the thoughtless to throw therein house-sullage and other filth, it becomes a very essential part of the duty of Highway Surveyors to take care that no offensive matter be let lie on the highway itself, or be cast or flow into the side-channels or ditches, or into those watercourses by which the contents of these are carried off.† These duties, arising out of the management and responsibilities as to highways, have been always recognized. The provisions in any statutes

* See before, p. 105. The duty of Courts Leet extends to inquiries as to all defaults of this kind. See several illustrations in my ‘Practical Proceedings for the Removal of Nuisances,’ pp. 4–9, 2nd ed.

† It is strikingly characteristic of some of the modern sanatory “improvements,”—hotly pressed on, under the cant cry of “sanatory reform,” by those interested in the growth of the functionary system—that the extensive use of water-closets has proved the greatest source of public nuisance. There is hardly an open ditch or a brook, now, in any country village, however formerly clean, that is not foul and offensive. Whole Parishes are thus poisoned for the so-called sanatory improvement of a few houses. Happily the Courts of Law have lately interfered, and granted injunctions against the consequences of these empirical measures. See, for instance, *Oldaker v. Hunt*, 1 Jurist, N. S. 785; *Attorney-General v. Luton Board of Health*, Vice-Ch. 7th Feb. 1856.

on this matter, are merely declaratory, except where, by careless wording, any statute has seemed to narrow the Common Law responsibilities.

The present Highway Act (5 & 6 Wm. IV. c. 50) declares the penal consequences of, among many other nuisances to highways, any one suffering "any filth, dirt, lime, *or other offensive matter or thing whatsoever*, to run or flow into or upon any highway, from any house, building, erection, lands, or premises, adjacent thereto" (sec. 72); and of "any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever" lying upon any highway, so as to be a nuisance (sec. 73). It is obvious how widely applicable these declaratory clauses are. They are, however, only illustrative, not exhaustive, of, nor even supplementary to, the Common Law requisitions; nor do the penalties attached to them affect the liability of all offenders to the often more effectual remedies at Common Law.* To the above are added two clauses, both of them, also, only declaratory of the Common Law, which enumerate the duty of the surveyor to "make, scour, cleanse, and keep open *all* ditches, gutters, drains, or watercourses; and also to *make and lay* such trunks, tunnels, plats, or bridges, as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway," paying compensation for any damage done (sec. 67). And the penal consequences are declared, if "any owner, occupier, or other person, shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such surveyor" (sec. 68).

It will be observed that the word "sewer"—a word that has lately got much but incorrectly into use—is not found in any of these declaratory clauses. To explain this, it should be stated that the true meaning of the word "sewer" is, a protection against the flooding of land by sea-water (sea-ware†). Deep trenches were cut, or high banks raised, as the case might be (more commonly the former), for this purpose. The Law of Sewers does not apply in any place which can be proved not to be within reach of the flow of the tide. It is only a very recent

* See another example, before, p. 218.

† This subject is fully explained in my 'Laws of England relating to Public Health,' chap. iv.

perversion of the original purpose of sewers, in and near London (the entire cause of the present pollution of the Thames), that has given a colour to the misuse of the term by ill-informed persons. And the word, with the corrupted meaning hence derived, has been used in Acts of Parliament passed in and since 1848, entirely through the want of knowledge, on the part of the promoters and framers of those Acts, of the history and practical bearings of the matters with which those Statutes profess to deal; an example of that want of knowledge which invariably marks the self-seeking doctrinaire and the pedantic functionary. Hence this word is not found in the Highway Acts: but the words "*drains, watercourses, trunks, tunnels,*" etc., correctly and exhaustively express what the loose phraseology of late so-called Public Health Legislation incorrectly calls "sewers." These words include, in fact, everything.*

In the Highway Act of 5 & 6 Wm. IV. the above-named clause as to cleansing and scouring was, by some accident, put as permissive only; differing therein alike from the Common Law, and from the older declaratory Statutes. This gives an instructive example of the mischief that will follow from servile adherence to the mere letter of Statutes,—always liable to such oversights,—instead of being guided by the Principles of the Common Law. Though the common law duty remained unaffected, much mischief followed this wording of the Act; it being easier to leave a permissive duty undone, than to fulfil an obligatory one. In an Act passed in 11 & 12 Vict. c. 123, this defect was corrected, and the clause was made again truly declaratory of the Common Law; that is, the cleansing, etc., was declared to be *imperative*, and not merely *permissive*, on the surveyors (sec. 6).† Altered again, with an extraordinary

* See 'Laws relating to Public Health,' chap. v. "On Drainage, properly so called." It should be observed that, at Common Law, the obligation rests on the owners of land to scour the ditches, and trim the trees and hedges, adjoining the Highway. But it was always the Surveyor's duty to *see that this was done*; and to do it himself, and present the offender, if it was left undone.

† This correction was made in consequence of representations which I made. The nature of these will be found in 'Laws of England relating to Public Health,' pp. 37, 38, 47, 99, 101, etc. So loose and unintelligent is the way in which Acts of Parliament are now prepared and passed, that an equivalent section in the Nuisances' Removal Act, 1855, was altered backwards and forwards, in utter ignorance of its meaning, history, and object, at the very latest stages of the Bill; and so came out of the Parliamentary

exhibition of the mere empiricism and recklessness of modern legislatorial capacity, this point rests now upon the Common Law. Perseverance has, however, after encountering every obstacle, succeeded in at length obtaining the legislative declaration (made highly important by the pernicious course of so much modern functionary intermeddling, and so many legislative blunders) of the *obligation* that rests on the Local Authority in every place, in conformity with the Common Law, absolutely to prevent, and take effectual measures to provide against, the existence of any nuisance through foul drains, ditches, or watercourses.* This obligation may be enforced by mandamus.

The subject of drainage is, then, one which falls directly and imperatively within the province of the Highway Surveyors. And on the general bearings of this subject a few practical observations may be usefully made.

In country towns and villages, there commonly exist drainage defects of two classes; which must be kept distinct in dealing with the subject, though each is equally important in a practical point of view, and each equally demands attention. The *first class* consists of actual and long existing drains in common use by groups of houses; and which therefore,—however the use may have grown up,—must now be deemed Public Drains, and must be dealt with as such. The *second class* consists of obvious abuses, to the public detriment, by individual houses or otherwise. It may appear, at first sight, not always easy to draw the line between the two classes; but there are a few simple rules by which this may be done. Every highway has its side-channels; and in all rural districts, or even partially rural districts, there are road-side and field ditches. These have been made, and can only properly be used, for surface-water drainage. But, under the neglect of the old and wholesome practice of frequent and periodical inquiry as to the condition, in each mill an absolute nullity. See 'Practical Proceedings,' as before, pp. 51, 163, *note*.

* Nuisances' Removal Act, 1855 (18 & 19 Vict, c. 121) s. 22. The provisions and bearings of this Act, together with its defects and the means of over-getting these, and the most efficient mode of its practical application, have been fully pointed out in my 'Practical Proceedings,' etc., already quoted. The course of proceedings, and the forms, there recommended, have since received the confirmation of the Court of Queen's Bench, in the case of *R. v. Middlesex*, 7th May, 1856. Compensation should not be made *before*, the work is done. *Boyfield v. Porter*, 13 East, 200; *Peter v. Clarkson*, 7 M. & Gr. 548; and see 'Practical Proceedings,' p. 92, *note*.

place, of all ways, watercourses, ditches, and so forth, the practice has grown up of encroachments, by individuals, upon these means for mere surface-water drainage, for the purpose of getting rid of the foul drainage,—the “sulliage,” as it is properly called,—from private houses or otherwise. The public has suffered, is suffering, and is likely to suffer, much from this cause; and it is quite certain that this evil has been greatly increased, in consequence of the empirical way in which questions connected with the public health have been too often treated of late years. Actual practical details have been little understood or considered, while attention has been too much distracted by merely empirical schemes for works of an imposing character, and on a large and therefore costly scale. The application of private and individual means, has been directly discouraged; and, instead of the duty which every man owes to his neighbours being enforced on the attention of each, men have been led to expect that what is needed for every man’s own convenience shall be provided for him at the expense of his neighbours.

In a rural, or semi-rural, district, means widely different from those applicable in towns must be used. Cesspools may be undesirable in towns. They are not attended with the same evils in rural districts. The larger the surface of sulliage, or other offensive matter, exposed, the greater must always be the amount of evaporation, and so of noxious exhalation. If the sulliage from a house, instead of being carried to a deep and still cesspool, is drawn out through a long and running drain, it is simply (notwithstanding the little-understood outcry on the subject of cesspools) a contrivance for giving off to the atmosphere the greatest possible amount of noxious exhalation. Many people seem to be not yet aware of the real use, of what is so often now carefully thrown off from each house, so as to be a nuisance to the public. Collected, and used in the garden, or on neighbouring land, it is of the greatest value: and this collection and use, with or without what is called “disinfection,” may be accomplished at a very trifling expense, and without any annoyance. Even where persons will not make themselves sensible of the value of the material thus thrown away, the public interest requires that the course now too often taken shall be put a stop to. It is a clear and just principle of the law of England, and the unquestionable tenure on which every man holds any property, that *none shall do what he may*

conceive to be for his own advantage in such a manner as to be in any way annoying to his neighbours. To enforce this principle in reference to the Drainage of every Parish, is all that is needed; and this the Highway Surveyors have full powers, and are bound, under the authority of the Common Law and of various statutes, to accomplish.*

In all cases in which houses in the rural parts of parishes, have turned their drainage on to the side-channel of the highway, or into any roadside or other open ditch, means should immediately be taken to put a stop to such a clear abuse; and to compel the owners to do, at their own expense, what is necessary in order to maintain all such channels and ditches clear and sweet, so far as freedom from such pollution is concerned. The making of a lined, covered, and *closed cesspool*, at a distance of twenty or thirty feet from the dwelling (though the farther off the better), and provided with a pump for the garden use, or for the otherwise regularly emptying, of the contents of such cesspool,—or with communication to some tank in adjoining land, if any arrangement of that kind is more convenient,—is the simple, cheap, and effectual remedy for the nuisance now caused in very many cases by defective house drainage. Penalties, as well as the liability to indictment, are incurred by every infringement of the Law. It will, therefore, be easy to enforce the adoption of such remedies.

Where there is an extensive group of houses, without use for the sulliage—either in gardens or in adjoining land—the remedy is no less simple and obvious. Where ancient use, however wrongly begun, has given a clear right to let the sulliage run off into some common drain, such drain ought to be put into an effective and wholesome state at the public expense, the mischief accruing from neglect being clearly a public one.† But wherever a new house is built, it will be proper (inasmuch as it could not, before its existence, have any right of drainage at all, other than surface-water drainage) to insist on some amount

* The Highway Surveyors, though there be no Highway Board, form an *essential part* of the Local Authority under the 'Nuisances' Removal Act, 1855;—a point, however, which, though obvious enough to any one having any regard to Principle as a guide in Municipal Law and practice, was not accomplished without difficulty. See 'Practical Proceedings,' p. 25.

† On this point, also, see 'Practical Proceedings;' and as to *assessments* for such works, see *ib.* chap. vi., and after, chap. viii. sec. 1.

being paid by the owner to the Parish, for permission to make use of any common drain that may theretofore have been provided, or which it may thereafter be found (as, where there is increasing building, it will obviously from time to time be found) desirable to provide, at the public expense. The charge thus incurred will, clearly, be for the benefit of the owner, and but what, or less than what, if standing singly, and making a cesspool in a proper manner, he would have to incur. What communications or drains are thus made, either for single houses or groups of houses (as in new laid-out plots or streets), should clearly be compelled to be done under the approval of the Highway Surveyors, and in conformity with the other drainage arrangements throughout the Parish. No considerable work should ever be done without an express previous communication to the Vestry; before whom also periodical reports of what shall have been accomplished should be laid. Every opportunity will thus exist,—which it is, on every account, in the highest degree desirable should exist,—for any and every person to make complaint of any case in which satisfaction shall not have been given, and to point out any defect in what is proposed to be done.*

The question will often arise, whether it is better to fulfil the duty as to drainage by keeping the removal of surface-waters distinct from that of the sulliage from houses, or by providing one means for the two. The two are usually so complicated together, that the Highway Surveyors have no choice but to make provision for both, whether the channels be open or covered. It is plain that either the house drainage must be combined with the rain-fall drainage, or two sets of drains must be constructed to maintain the separation, at a greatly increased cost, as well as at the chance of greater annoyance from the increased risk of stoppage of a double set of drains; one set of which will be dry when there is no rain, and the other will generally have only such a quantity of water passing through it as will scarcely suffice to keep the contents in a fluid state, and will be wholly inadequate to scour the drains out, as is effectually done in ordinary drains whenever a heavy fall of rain occurs.

Occasions may and do exist, however,—as in billy districts,

* See further and fully on all practical details connected with this subject, 'Practical Proceedings,' etc., already referred to.

and where the strata are very compact and slowly absorbent,—where, owing to the great volume of water suddenly poured down in case of storms, so large and therefore costly a covered channel would have to be constructed, that it is better to make a separate drain sufficient to carry clear away the sulliage from houses, and so leave the old open watercourse clear and unbecomingly fouled, as it was before any houses arose in the neighbourhood. The circumstances must always govern the proceedings.

In considering all these works of drainage, it must always be remembered, that the hardness and well-keeping of the road require the constant draining off of any internal waters, just as much as of waters of rain-fall. Therefore, the drains made must always be sufficiently deep to effect this purpose. It will, on this account, be often found that a covered drain is really less expensive in the end than an open one; which is liable to be found either insufficient because too shallow, or difficult to keep scoured and clear because so deep. Being thus covered, the arrangements as to the drainage of the sulliage from houses into it will be the more easily made.

The Board of Health would, if it could, prevent any place in England from being drained at all, unless drained according to its pedantic dictation, and by its charlatan and always costly nostrums.* But the one thing really needed to give a true and universal impetus to good drainage and sanitary improvement throughout England, is the making the force of sections 67 and 68 of the Highway Act (which have been shown to empower drainage, etc.) properly understood, in conformity with the Common Law. To this end, a short statutory declaration

* This was written before Parliament had, on the 31st July, 1854, refused to allow the Board of Health to remain in existence, as constituted under the Public Health Act, 1848. Being not the less true, however, and remaining true of functionarism as a system, it is left unaltered in the text. The Board of Health has, since its reconstitution, sought to obtain still wider powers, and more heavy means of coercion. Happily, its aims have been defeated. It is a Board that has, from the first, obtained its ends only by a reckless and unprincipled system of charlatanism, misrepresentation, and false pretences. It has brought mischief, public nuisances, misfortune, and a heavy burden of wasted cost, on the places that have suffered themselves to come within its grasp. Its schemes have uniformly proved failures; while the cost entailed by experimentalizing upon them has been enormous. And this cost, though the schemes have proved failures, remains a permanent burden on the places that have been afflicted by its influence. The examples are so numerous and notorious, that it is unnecessary to specify any here.

of the *duty* (enforced by penalties) of Highway Surveyors to make all drains sound, and to lay down covered drains, or other artificial structures, instead of open ditches, where needed, would be of great value. Those who specially use each such public drain, should bear a proportioned part of any extra cost made necessary to be incurred in consequence of such use. This should be assessed on each house by the Surveyors, as Highway Rates now are, with power of appeal.

Since the publication of the first edition of this work, Parliament has put its seal to the suggestions thus given; which are now, therefore, not the mere practical suggestions of what the Statute Law ought to be, but the realized state of the Statute Law as it stands.* Under these practical suggestions, within one year after they had been embodied in a Statute, more works for the removal of drainage nuisances had been done in England, than had been done in all the ten preceding years under former "Nuisances' Removal Acts;"—a good illustration of the difference in results between empirical legislation of the doctrinaire school, and practical legislation in conformity with the Common Law and the spirit of our Institutions.

It needs but energy and determination, however, for everything sound and wholesome in this direction to be accomplished, even without any measures of declarative legislation.† It will usually be found that the duties of the Highway Surveyors will be much forwarded, in respect to works of drainage, by the appointment of a special Committee of the Vestry to co-operate with them in all that relates thereto.‡ The most efficient course of all will be, the appointment of a Highway Board. It is, however, essential that the inhabitants should always clearly understand that the function of public officers, and of any public Body, is, not to relieve private individuals from the responsibilities that belong to them; but that it is, on the contrary, to take care that those responsibilities are well fulfilled. Such officers or Body should always be ready to give

* Nuisances' Removal Act, 1855. See before, pp. 256, 340, 341.

† Apart from the power which Surveyors of Highways have, it will be remembered that any such work can be done under a Bye-Law of the Parish. See before, Chap. II.

‡ This point, also, though not without much difficulty and perseverance, I succeeded in getting recognized in the 'Nuisances' Removal Act, 1855.' See the details in 'Practical Proceedings,' etc. throughout.

the assistance of sound suggestion ; but they never ought to let themselves be the means of giving an advantage and benefit to individuals at the expense of the public.

Before leaving the subject of drainage, it will be well to notice another practical point on which much controversy has lately arisen ; a controversy due, as is so often the case, to the circumstance that parts only of groups of facts have been regarded, without attention to all the conditions which must enter, as essential elements, into every case in question. This controversy—if controversy that may be called where there is, on the one side, only the unscrupulous dogmatism of irresponsible functionaries, and, on the other, the results of all experience,—has turned on the use of an exclusive system of small tubular pipe drains, instead of the adaptation, according to circumstances, of brick drains, in connection with smaller ramifications of either brick or pipe drains.

A body of water passing over a broad surface in a thin stream, is exposed to great friction ; and will consequently run slowly, and its tendency will be to deposit what it holds in suspension. If, on the other hand, the channel be contracted, the friction is diminished ; the course becomes more clear and rapid, and the deposit less. But it is equally obvious that, whether the artificial watercourse thus made be one foot high or five feet high (the form at bottom remaining the same in each case), can make no difference whatever to the clearness of the flow or the amount of deposit. As, then, it is distinctly admitted by its advocates that, for the tubular pipe sewerage system to work well, it must be perfect both in structure and laying, while such perfection is practically, as a rule, clearly unattainable, and, if attainable, the work is liable to inevitable dislocation on the putting in of every fresh junction and new house-drain ; and as it is unquestionable that, beyond a low size, brick sewers are cheaper than pipes ; it seems but the part of common prudence always to build drains of such height, with corresponding size in their upper part, as shall be calculated to meet all probable contingencies, whether of rain-fall or increased town drainage,—care being taken that the shape and structure of the lower part shall be such as to ensure a clear, clean, and rapid flow of the smallest ordinary run.

Another important point immediately connected with this, is the provision, in every such case, for drainage of the subsoil.

It has been already shown that the thing most needed, in order to maintain the Roads in good condition, is the keeping them as dry as possible in their body. But, as the most solid and well formed road will itself absorb some rain-fall, and will always be liable to be more or less undermined by the water absorbed through the surface of the adjoining lands on each side, and will often have springs underlying its own bed, it is very important that the system of drainage adopted should be of a kind which will tend continually to draw off moisture from the subsoil, and so to maintain the whole road hard and firm, and free from danger of illustrating the condition of an overcharged sponge. This important point is entirely overlooked by the tubular drain advocates; who go so far as to make the glazing or vitrification of the pipes a part of their system. Nothing is gained, in freedom of run, by the glazing; as the flow of sulliage itself supplies, in a very short time, a coat as smooth as any glaze can give. But it is material to the practical results, that an entire prevention is put, by this glazing, to the least drainage of the subsoil.* Nothing can be more mischievous than this, either to the condition of the roads themselves, or of the atmosphere, or of the foundations and lower parts of houses adjoining. Yet some have sought arbitrarily to enforce this system in every place, with as much pertinacity as if the prosperity of the nation depended upon artificial "protection" being given to patent drain-pipe manufacturers. Brick drains, of sizes adapted to the circumstances of each case, with the invert of the arch turned in cement, and the upper half in mortar, secure every purpose of clear, unimpeded, and rapid flow to the smallest quantity passing through them, together with the impermeability of its channel; while the structure of the upper part secures the constant drainage of the subsoil, and the carrying off of this latter drainage by the same impermeable channel. Thus the ground will never be in such a state of overcharge with moisture, as that floodings shall happen through incapacity for absorption on sudden rains; or that the road shall decay through gradual internal rot. Where the circumstances render pipes useful, as they often will be in short lengths (in which way alone they

* And there is a constant tendency to self-undermining in consequence. The water of the soil round, unable to percolate at all through the pipes, clings round them, and works more or less of a channel beneath them.

should be used), they ought to be made of well-burnt, but never of glazed or vitrified, material. The drainage of the sub-soil will be carried on by this means to some extent, though not so completely as by brick drains, and without the advantage of the impermeable lower half. Glazed or vitrified pipes should only be used in or under buildings. Here they may be rightly used, because there is, at the same time, least possibility of the absorption of moisture to the ground from without, and the great object is, to carry clear away all waste water and sulliage from the house, without the possibility of any of this percolating through the substance of the drain which conveys it.*

What has been thus said, refers to the needful repair and maintenance of the old and well-known roads that exist in every Parish. But from time to time, in every neighbourhood, new roads become acquired or desirable. It is the duty of the Highway Surveyors to take care, on the one hand, that the public be deprived of the use of no way which it has once acquired the right to use; and, on the other hand, that the expense of the repair of no new way be thrown upon the public, merely to suit the accommodation of one or a few projectors. This is the old Common Law; and this is entirely supported by the latest declaration of the Law in any shape.

Neither formal dedication, nor remote antiquity, is necessary to create a public right of user as a Highway. If a highway is out of repair, flooded, or from any other cause impassable, it has always been lawful for any passenger to use the adjoining private land (not being actually in domestic use) with as much freedom as if it were the old accustomed highway.† This old and settled rule of the Common Law is recognized by the 25th section of the Highway Act, 5 and 6 Wm. IV. c. 50. The public very soon also acquires a right to the permanent use of a road. A few years' uninterrupted free passing over it will give

* In 1853, a Report was laid before Parliament, and published, made to Lord Palmerston (then Home Secretary) by Dr. Arnott and Mr. Page, in respect to drainage works at Croydon. This Report contains full illustration of what is stated above. What is there given as lamentable *result*, had, however, been foretold as inevitable in my 'Laws of England relating to Public Health,' published in 1848, p. 105, *note*. I may also refer to the published "Proceedings of the Institution of Civil Engineers," upon a paper "on the Drainage of Towns," read before that Institution on 23 Nov. 1852; in the course of which proceedings I pointed out the facts and bearings of the above subject at much greater length than can be done here.

† See further on this point in Sec. 10, on "Enclosure of Commons."

a right to the public to continue to use it, and be sufficient to prevent the resumption or closing of the ground.* The number of people passing, or the directness of the way, is not the question. It is, the openness, and opportunity, and actual use by any of the public who choose. If any one opens a road for a particular reason, and does not wish the public to acquire a right in it, he should put up a notice, and set a bar across it once a year, or do some other thing which shows that there is no actual dedication to the public.†

If, on the other hand, any one wishes to dedicate a way to the Public, and that it should be acknowledged as a public way, the liability to the repair of which shall, at once, fall on the parish, he is bound to do certain acts which will give full notice of his intention; and thus give those on whom he desires to fix this liability the opportunity, if they please, of rejecting it. The present Highway Act requires him to give three months' previous notice in writing, of his *intention to dedicate* such way. He must describe its situation and extent. He must make the same, at his own expense, in a substantial manner, of the proper width,‡ and to the satisfaction of the Surveyors and also of two justices. And he must himself keep it so, for a full year after the dedication. These are all *conditions precedent*, upon the fulfilment of which depends the casting of any obligation upon the Parish, after the expiration of the year and three months. Immediately on receipt of the above-named notice of intention, the Highway Surveyors must—it is imperative, not optional—summon a Vestry meeting to consider the matter, in respect to the “utility” of such road. The vestry usually discusses the matter on a view and report by their officers and some inhabitants. Practically, this decision is final. For, though the Highway Act speaks of the applicant for dedication being summoned before the justices, it is an *essential requisition* that the road shall be made “to the satisfaction of” the Parish Surveyors.§

* See *R. v. East Mark*, 11 Q. B. 877; *Roberts v. Hunt*, 15 Q. B. 17; *R. v. Petrie*, 24 Law J. Q. B. 167.

† *Rugby Charity v. Merryweather*, 11 East, 376; *Woodyer v. Hadden*, 5 Taunton, 125; *Poole v. Huskinson*, 11 M. & W. 827.

‡ A cart-way, twenty feet at the least; a horse-way, eight feet at the least; a foot-way, three feet at the least. 5 & 6 Wm. IV. c. 50, s. 80.

§ 5 & 6 Wm. IV. c. 50, s. 23. Sec. 62 provides arrangements for the parish undertaking the repair of roads which individuals were, before, liable to repair. See *R. v. Leake*, 5 B. & Ad. 469, as to liability to repairs, generally.

It is nearly the same in regard to stopping up, diverting, or altering any road. No Highway Surveyor can either do, or consent to the doing, of either of these. The right is in the public. And the public must have the opportunity of expressing its opinion. When, indeed, a representative Body, in the shape of a Highway Board, or a vestry under Hobhouse's Act, has been appointed, that Body has the entire power to consider and decide on such a matter, as well as on any application for dedication of a road. But this is a very different thing from a single officer, or two, or three, having such power.*

* It is important that the true position of such Bodies should be well understood. Though no one who has any real knowledge of the Principles of our Institutions can be in doubt, yet the growth of Bureaucracy in England has, of late years, unhappily caused so much tendency to the servile groping after the mere dictation of Acts of Parliament, and to the hanging upon functionaries, that the Common Law, as well as what is becoming to a spirit of Independence, are often equally forgotten. It has already been remarked that no Statute can be other than ancillary, on such matters, to the Common Law (before, pp. 10, 134, 228, 258, 333). No Statute can supply every particular of action, any more than a Statute can dictate the times and hours of every man's daily occupation. Where a Statute suggests the formation of any Body, in conformity with the Spirit and Principles of the Common Law, that Common Law applies, as of course, to all the details of action of that Body. The Highway Act simply re-declares how ordinary Surveyors of Highways (whom I have distinguished as *Single Surveyors*) are to be appointed. But a very wise provision in the Act also recognizes the Common Law power of altering the mode of action, where the parish desires it, on account of the extent of its population. "It is expedient," declares the Statute, "in large and populous parishes, that the repairs of Highways should be *under the direction and control* of a certain number of inhabitants, to be chosen and appointed as a Board for that purpose, *with necessary powers*." The entire "direction and control," where such Board is appointed, are, therefore, put in its hands. No other Body nor functionary has any authority or power to interfere. The Board is appointed by the Vestry; and is, of course, responsible to it, but to it only; and, as with every other representative Body, when it comes for re-election, the re-election of any of the old members will depend on whether their duty is felt to have been well discharged. To enable the Vestry to form a proper opinion on this, the same section enjoins that the Highway Board shall, *before the election of a new Board*, lay copies of its *accounts* and *minutes* of its proceedings before the Vestry. In the case of single Surveyors, though they lay their accounts before the Vestry, the sense of actual responsibility is weakened by their being subjected to the professed, but unsound and fallacious, "control" of verifying these before Justices, with nominal opportunity to any one for complaint. See before, pp. 112-114. But they have no minutes of proceedings to lay before the Vestry. It will be useful to quote here the language used on this subject by the Poor Law Commissioners, in their official Report to the Home Secretary on the subject of Local Taxation, in 1843. "A Board for the repair of Highways have very different duties [from single surveyors] in regard to their ac-

If the inhabitants, in Vestry assembled, or a Highway Board, or elective Vestry, themselves think it desirable to stop up, divert, or turn, wholly or partially, any way, the chairman of the meeting must, by order in writing, direct the taking of the necessary steps. If anybody else wishes to stop up, divert, or turn any way, he must, by notice in writing, if there be no counts. They may employ a clerk to attend the Board, and to keep their accounts and minutes. At the expiration of their year, and before, or on, the day for the election of surveyors, they are to present to the vestry of the parish, copies of their accounts and minutes of their proceedings for the preceding year. Here the responsibility of a Board for the superintendence of Highways appears to end. The parish have no authority over the accounts so presented; there is not even a verification of these accounts before magistrates, still less an opportunity for complaint of any ratepayer, or for an examination on oath. The parish cannot, as in the case of the surveyor's accounts, even order an abstract of the Board's accounts to be published. . . . This Body is the most irresponsible in respect of the moneys and powers entrusted to them of any officers of recent institution." It is characteristic of that Report to seek to make out a case for getting all Local Taxation under the control of the Poor Law Board. It is pretended, therefore, that Highway Boards ought to be made responsible to Poor Law Auditors!! This is an amusing instance of the grasping rapacity of functionaries. The security derived by the Public from Poor Law Boards and their Auditors, is well illustrated by the enormous frauds which have been carried on, ever since the New Poor Law Acts came into operation, in the Collection and disposal of Poor-rates.¹ The natural and necessary result of such systems must always be, as has already been shown in this Book, to make men remiss and unheedful, instead of to protect them. Thus frauds are directly encouraged, as is every other shape of social demoralization, by the bureaucratic and functionary system. But a Highway Board is a truly *Representative* Body, immediately and thoroughly responsible to those whom it represents. It will look far better after its accounts than any functionary Auditor. The knowledge and interests of *several* are brought directly to bear; and the Board is acted on by the full force of public opinion,—which it *cannot shun*. An example of the "searching discussion" hence arising has been already given, p. 247 (*note*). Though there is no going before Justices (to which no Board of high-minded men would submit), there is the fullest *real* opportunity for complaint, and for whatever examination of accounts the Vestry may think right. What is stated in the above extract as to printing the accounts is untrue. The Vestry can order an abstract to be printed, or any other course to be taken that it thinks proper. This is the great and constitutional advantage secured by having a *Representative Body* which is not (like most that are so called) irresponsible, but which is bound to meet, openly, the *Corporate Institution* of those whom it represents.

The 18th section of the Highway Act further declares, that "*all and every the powers and authorities given and created by this Act, and granted to*

¹ See the facts of one case that happened to be found out—though not even then through the Poor Law Board—after twenty years' impunity, in the City of London; reported in the *Times* of Dec. 31, 1856.

Highway Board, require the Surveyor to give notice to the churchwardens to summon a Vestry to consider the matter. The Vestry then considers the proposal, and determines on it. If it agrees, the Surveyor is to take the necessary steps, as before, but at the expense of the applicant. It is a usual, and very proper, condition of such assent, that he who asks it shall pay a sum, agreed upon between them, to the Parish stock.

The steps to be thus taken are in the shape of Notices, etc., for the purpose of securing publicity and deliberation, and of giving every one interested the opportunity of resisting the proposed change. There is an ultimate appeal to an impartial jury.*

The method thus pursued under the Highway Act, adheres, with some exceptions in details, to the practice of the Common Law. But there is another method, not alluded to in the Highway Act, although, like other remedies and methods of the Common Law, still available. This is by the summoning of a Jury in the first instance, to make inquiry, upon oath, by the men

or vested in *the Vestry*, and in any person or persons as Surveyor, shall, for the purposes of the parish so nominating and electing such Board, be, and the same are hereby declared to be, vested in" the Highway Board. Thus, as well all powers of "direction and control" as to all works and repairs done, as all the powers and functions usually exercised by the Vestry, under several sections of this Act, are, where there is a Representative Body appointed in the shape of a Highway Board, vested absolutely in that Board. This section thus overrides all the requisitions in other sections, on all such matters, that apply to the case of Single Surveyors. A Highway Board differs very importantly from a Select Vestry under Hobhouse's Act in this:—that the former has special powers,—without the Vestry itself being, however, absorbed. A Select Vestry under Hobhouse's Act has no special powers,—*but the Vestry itself* is absorbed in it. The former system is, by far, the more sound one.

Although the actual position of the Highway Board is thus clear, it seems not the less a matter of sound wisdom and policy,—as it is, assuredly, the most consistent with the principles and spirit of our Institutions,—that it should submit all matters of special importance to the full Vestry, before taking action. (See before, p. 248, as to audit of accounts.) The true spirit and sense of responsibility dignifies all parties. It is a degradation to none. On the contrary, the committal of a trust *thoroughly understood by the entrusters*, is far more honourable to those to whom it is committed, than is mere blind nominee-ship, however much the latter may be miscalled "*Representation*." The more thorough is the mutual confidence that exists between the Highway Board and the Vestry, the more satisfactory will always be the action of the former. I have elsewhere illustrated this point more specially. 'See 'Local Self-Government,' etc. pp. 36, 39, 40, etc.

* 5 & 6 Wm. IV. c. 50, ss. 84-93.

of the neighbourhood, whether a proposed alteration will be of any, and what, damage to the Public. This proceeding is set in motion by a writ called the writ *ad quod damnum*,* which any one can take out. It is one of the most important practical methods known to the Law of England. It is a method applicable to an infinite variety of subjects, besides the matter of alteration of roads. The writ ought to be issued out, and inquiry be had under it, on every matter by which the interests of any place are, or may be, affected. It is based on the most thorough constitutional Principles: and it was by the constant use of means such as this writ supplies, that the men of every neighbourhood were formerly taught habitually to feel, that the function and duty belong to themselves of inquiring into, and coming to a decision upon, all matters that concern them as members of the same neighbourhood. The modern invention of Government by Commissions (altogether unknown to the Constitution) has taught, and is continually spreading, the comfortable doctrine, that slothful and unmixed selfishness should be the only thought of every man; and that it will save trouble to let all our duties to our neighbours be left to irresponsible functionaries to do and manage for us: thus discouraging the task equally of getting knowledge, of thinking, and of acting,—of everything, in short, which characterizes the free man.

If, after inquiry under the writ *ad quod damnum*, or by the method previously stated, a way is altered, the altered way becomes a part of the ways for the maintenance and repair of which the Parish is responsible.

It is of great importance that it be always borne in mind that *footpaths* are included within all the liabilities and responsibilities as to highways. It is not the mode of passage that makes a road a Highway. It is the fact of the right of the public to pass over it;—whether by foot, horse, or carriage, is all one as regards the Law and the Principle. A field Footpath is just as much a Highway as the broadest carriage-road in the land. The Highway Surveyors are just as much bound to keep the former open, in good repair, and freed from any obstruction, as the latter. This is too often forgotten.†

* That is, a writ to make inquiry, by the men of the neighbourhood, whether it will be *to the injury of any one* if such or such a thing is done. See hereon, *R. v. Essex*, 1 B. & Al. 373; *R. v. Russell*, 6 B. & C. 588, 589.

† See before, p. 111.

It is well remarked by a writer already quoted, that, under the Common Law, "no distinction can be found between footpaths and carriage-roads: the right of the public is of exactly the same quality over the one as over the other; and it ought to receive the same support in both instances. It is frequently asserted, that footpaths are very injurious to the property over which they pass. This I deny, if it be meant that they are injurious to the *quantum* of property vested in the owner. The soil is not so valuable as it otherwise would be: but it is as productive as it ever has been to the proprietor: and it was with reference to its present capability that he purchased the estate. Every right of way is a public easement, which must have been acquired with the consent of the owner of the soil; [more correctly, which was reserved and retained to the public use, when the rest of the land, at first altogether common, was allowed to be appropriated to separate proprietorship.] In almost every instance, *the closing a public way for the benefit of the proprietor*, is an *absolute gift, without consideration*, to an individual, *out of the possessions of the public.*"*

There has, of late years, been a continual course of attempts by owners of land, or their agents, to close public footpaths. Formerly this could not be done. The unevadible periodical inquiries kept every man's attention alive to such attempts, and gave a ready and certain remedy against them. The attempts that now take place, are made because that wholesome check has, unlawfully, and most injuriously, died out of its former regular and universal practice.† But they are not the less made in defiance of law and right. They are made because it is thought that no individual man will run the risks of a contest on the question. It is the duty of the Highway Surveyors, on behalf of the community they act for, to watch these things, and to resist every attempt to close or divert any footpath. The public field-paths of England are the most valuable possession of the poor of England. They constitute, no less, one of the great charms of the country to every man of taste and feeling. But to the poor man they are the chief means of health; and the great helps in what is, to him, income—namely, time and distance. They are as much his birthright and inheritance and property, as the acres they lie over are those of the

* Wellbeloved on Highways: preface, p. viii.

† See before, p. 216, on the importance of the Court Leet.

proprieters whose agents dishonestly seek to “improve” that property, by depriving others of their rights and property. It is as much a fraud and a robbery, and a crime against society and the State, to stop up a public Footpath, over which the poor man is accustomed to pass, as it is to stop the rich man on the Highway and demand his money or his life.

It is very necessary that Highway Surveyors should understand their duty in this behalf. Round London on all sides, round every town, and in numberless rural districts, public footpaths,—most of them public and open since England was first Saxon,—have been and are being ruthlessly and unrighteously enclosed. Private proprietors and Public Companies, especially Railway Companies, are equally eager in this work of unholy spoliation. Let the Parish authorities remember that they are responsible for the maintenance of the Common Right in these ways. If they fulfil their duty, the wealthy, the overbearing, and the unscrupulous, will always, in the end, equally yield before them.*

There are provisions contained in the Highway Act as to the footways at the sides of carriage-ways.† There is nothing new in these. They only attempt to lay down points on what may be much better stated in, and left to, the Common Law Principle, already clearly proved in these pages, that, where the public convenience and wish require a causey‡, it ought to be made; and that, wherever a work is done for the public accommodation, and upon its order, whoever interferes with or injures such work, is a wrongdoer against the public. It is the duty of the Highway Surveyors, by Common Law as well as Statute, to give full heed to this.

It being always a recognized principle that the interests of the public are paramount to those of individuals, many powers and rights have always been recognized in the Highway Surveyors as to getting materials for repair of the Highways.

* An instructive example is afforded by a contest in which the Parish of Hornsey (Middlesex) was engaged, in 1850–2, with the Great Northern Railway Company; that company having (as it has done in other places—unfortunately too generally unresisted) taken on itself to interfere with several footpaths in that Parish. It had recourse to all the means in its power to attain its end; but the Parish authorities pursued it into the Queen’s Bench, and through Committees of Parliament, and it was defeated; and had, besides, to pay heavy costs.

† 5 & 6 Wm. IV. c. 50, s. 80.

‡ See before, p. 105, *note* *.

They may dig for and take what materials they please in and from any waste or common land, or the bed of any stream, within the parish—and even out of it if necessary. They may also gather stones from the surface of any enclosed and private land, without paying any price for them; but they must make compensation for any damage done in gathering them. They have even the power of digging for materials in any private property, if necessary; but in this case compensation for the materials so got must be made. All this secures the means of getting the necessary materials. Notice must, however, in these last cases, be given to the proprietor; who has then the opportunity of showing cause, if he can, before Justices, why the materials should not be got from his ground. Of course all holes and pits must be made safe, whether in waste or private ground, after the Surveyors have got out of them what they need.*

Contracts may be entered into for purchasing, getting, or carrying† materials; but these must be made with the consent of the Vestry‡, unless there be a Highway Board; which can make all contracts without such consent.§

It often happens that Lands have been given, or allotted out of enclosed commons, in aid of the Surveyors of Highways. In such cases, the land may be either let on long leases, or, with the consent of the Vestry, sold.|| In either case, the proceeds must, of course, be applied for the benefit of the Highways. In case of sale, other lands ought to be purchased, in lieu of those sold. These provisions, which are contained in the Highway Act, are useful on account of the terms of some of the old Enclosure Acts, the restrictions in which they override.

In order to make the use of roads more easy and convenient, the Highway Surveyors ought to put up fingerposts where two

* See 5 & 6 Wm. IV. c. 50, ss. 51-55.

† In the case of carrying, any two ratepayers may, within six days after the choice of Surveyor, require him to call a Vestry; which he must then call accordingly, within eight days after requisition, and give six days' notice of it. At such meeting, the propriety of the carriage of materials being divided between parishioners, is to be considered and determined on. 5 & 6 Wm. IV. c. 50, s. 35.

‡ 5 & 6 Wm. IV. c. 5, s. 46.

§ See before, pp. 351, 353 *note*.

|| 5 & 6 Wm. IV. c. 50, ss. 50, 48. As in other matters, where there is a Highway Board, the separate consent of the Vestry is unnecessary; though it will generally be desirable that such consent should be appealed to.

or more roads meet, and in other places where they are likely to help travellers. It is desirable that, wherever a public footpath turns out of a Highroad, such a fingerpost should be planted, stating the fact of its being a public footpath, and where it leads to. No statutory provision is necessary for these matters, though a declaratory one is contained in the Highway Act.*

The duty of removing all nuisances has already been alluded to. It is not possible to make an enumeration of what come under this term. It is a characteristic of the Common Law of England that it is elastic; and not, like Statute Law, procrustean. A *nuisance* is, whatever is hurtful to, or restrictive of, a public right, according to the best knowledge and evidence that can be got. In one age one thing may be found thus hurtful or restrictive, which was unknown in itself, or not understood to be hurtful, in another. The Common Law Principle instantly includes this latter as a nuisance, just as much as any other thing ever held to be such. "If a man erect anything offensive so near the house of another that it becomes useless thereby,—as a swine-sty, or a lime-kiln, or a dye-house, or a tallow-furnace, or a privy, or a brew-house, or a tan-fatt, or a smelting-house, or a smith's forge; so if a man erect a wash-house, stable, etc., and put filth in it to the annoyance of a garden;—all these are nuisances at Common Law."† And thus, "if a man erects a nuisance near to the *highway, by which the air thereabouts is corrupted*,‡ it must, in its nature, be a nuisance to those who are on the highway, *and therefore is indictable*."§ Lord Coke, in a case where the two, at first sight very unlike and unconnected things, of obstructing the light and keeping hogs, were in question, puts, very pithily, the moral connection which the real lawyer and Statesman will often see to subsist between things bearing, at first sight, little relation to one another. "For stopping, as well of the *wholesome air*, as of *light*, action lies; for both are necessary:" and he adds:—"if the *stopping* of the wholesome air [*i. e.* the mere *obstruction* of light and air] gives cause of action, *à fortiori* an action lies for infecting

* Section 24.

† Comyn's 'Digest,' vol. i. p. 291. See my 'Laws of England relating to Public Health,' chap. i. 'of Nuisances;' and 'Practical Proceedings for the Removal of Nuisances,' etc., 2nd ed. pp. 45-7.

‡ See beginning of this Section. p. 333.

§ Strange, 687.

and *corrupting* the air.”* Lord Mansfield declares that “it is not necessary that the smell should be unwholesome: it is enough if it render the enjoyment of life and property uncomfortable.”† And Chief Justice Abbott expressly declared that “it is not necessary that a public nuisance should be injurious to health. If there be smells offensive to persons passing along the public highway, that is enough,—as *the neighbourhood has a right to fresh and pure air.*”‡ Without adding to such quotations, it is sufficient to say, that, even though a work be done under authority of an Act of Parliament, it does not relieve the doer from liability, if it prove a nuisance;§ and, moreover, that “it is immaterial how long the practice may have prevailed, for no length of time will legitimate a nuisance:”|| “there cannot be any prescription for a nuisance.”¶

The general principles that will be perceived to run through these illustrations, are more instructive, and a much better guide, than a hundred sections of Acts of Parliament that attempt to enumerate nuisances. Whatever makes any highway less commodious to travellers than before, is a nuisance.** It is of little importance to refer to what certain sections of the Highway Act contain, though these are by no means uncomprehensive.†† It is the duty of the Highway Surveyors to take care, as far as possible, that all passers along the highways have that “fresh and pure air” to which every “neighbourhood has a right.” This duty has already been touched upon in speaking of drainage;—a matter in which it is specially involved.

The perversion of language which, among other injurious consequences, functionarism has introduced, has latterly led to the term “Nuisance” being used almost exclusively with respect to one group only of those things which are really included within it. A nuisance really is, whatever hinders the public from the convenient enjoyment of any right which it is entitled to. Thus, there are two other important classes of

* Aldred's Case, 9 Coke's Reports, 57 b.

† 1 Burrow, 337.

‡ R. v. Neil, 2 Carrington and Paine, 485.

§ Turner v. Sheffield and Rotherham Railway Company, 10 Meeson and Welsby, 425.

|| R. v. Cross, 3 Campbell, 227; and see the note p. 21, of ‘Laws of England relating to Public Health;’ and the chapter, there, throughout.

¶ Cro. Car. 185.

** 2 Roll. Ab. 137.

†† See, for instance, ss. 70, 72, 73; and see before, p. 339.

nuisances, besides those which are offensive in the sense just alluded to, which it is the duty of the Highway Surveyors constantly to heed. The first is, of such things as tend to damage the soundness of the road itself; the second is, of such things as tend to endanger or impede free passage along it.

To the first class belongs the state of the hedges and trees near the Highway. Nothing is more injurious than the neglect of these. If too close and thick, they prevent the sun and fresh currents of air from having free access; and so the road can never be kept dry and hard. If they actually overhang the road, they have an additional and directly injurious effect, by keeping the wet always dropping on it. Both are among the most frequent causes of bad roads. The Highway Surveyors have full power, and the clear duty, to enforce the clipping, lopping, and pruning of hedges and trees. This has been restricted, by the Highway Act, in cases where these are planted for the shelter of any hop-ground, or for the ornament or shelter of any house, building, or courtyard.* But, on the other hand, no one may, according to the Highway Act, plant any tree or *shrub* within fifteen feet of the centre, on either side, of any carriage or cart way.† This is, however, a mere arbitrary enactment, often preposterous, and which ought never to be enforced unless special circumstances require it.

The second class of nuisances above named, consists in things upon or near the Highway, to the danger or obstruction of those using it. A house standing near a Highway, in so ruinous a condition as to be dangerous, is a Nuisance, and the owner or occupier is liable to indictment.‡ And so a deep ditch or hollow close to the roadside, is dangerous; and is consequently a nuisance. There are some cases where things, in themselves legitimate enough, are put in such a manner, or remain for such a length of time, as to hinder the free use of the way. Thus, while, as has been seen, no one can alter any drain made, without the authority of the Surveyors,§ if any man pushes his fence out further than he ought, or puts up any erection of any kind on any highway, or opens or cuts up any road,|| or ploughs

* 5 & 6 Wm. IV. c. 50, ss. 65, 66.

† Sec. 64.

‡ *R. v. Watts*, 1 Salkeld, 357.

§ Sec. 63.

|| When Public Companies open roads to lay pipes, etc., they must pay a sufficient compensation to the Highway Surveyors, to cover all cost of making the same good. This compensation is usually settled at a regular tariff of so much per square yard superficial. See *note ¶* on the next page.

up a footpath crossing a field,* it is a nuisance, which the Surveyor is bound, without delay, to remove or remedy, at the expense of the wrongdoer. Even if it be a house or building that is thus put up, it should be at once removed, for it is a nuisance.† If, as is often the case, an enclosure Act has prohibited any building being raised on lands enclosed under it, within a certain distance of the Highway, though a boundary wall only may not be a nuisance, any sort of covered building is unquestionably so; and proceedings, as against any nuisance at Common Law, should be taken to remove it.‡ Even materials for repairing the Highways must not be let lie there without proper care and precautions.§ If horses or cattle are driven on a footpath, or any animal is tethered on a highway of any sort; or if a gate, ever so convenient, is put up, where none has been before; or if a stile is raised higher than before; or if a cart, waggon, or other carriage, remains so unreasonably long on one part of a road as to obstruct traffic; or if goods, being put down on a road near a house, are let lie long there, instead of being got in with all despatch; or if stage coaches loiter about to pick up passengers, thus blocking up the road;—all these sorts of things are nuisances at Common Law. Highway Acts may imperfectly enumerate some of them.|| They all depend on one principle,—that the Highway is for the Public Common use,—and no man must be allowed to do anything that shall hinder or endanger the equal and convenient use of it by others.¶

The duties thus enumerated have many parts and bearings; but they all have one general direction. They are duties, too, towards the right fulfilment of which it is obvious that all the

* *Horne v. Widlake*, Yelverton, 142.

† *Perry v. Fitzhowe*, 8 Q. B. 757; *Davies v. Williams*, 16 Q. B. 546.

‡ *R. v. Gregory*, 5 B. and Ad. 561, 2.

§ See 5 & 6 Wm. IV. c. 50, s. 56. As to snow-falls, and other similar unavoidable obstructions, see *ib.* s. 26.

|| See ss. 56, 69, 72, 74. See ss. 70, 71, as to Engines, Kilns, etc. near to roads, and as to Railways crossing them.

¶ “Every unauthorized obstruction of a highway, to the annoyance of the King’s subjects, is an indictable offence.” Lord Ellenborough, in *R. v. Cross*, 3 Campbell, 227. In case of any hoarding or scaffolding put up, this is an obstruction, and so a Nuisance. As these are, however, things that cannot sometimes be avoided, the proper course is, for the Vestry, where there is no Highway Board, to determine on a table of regulations and fees, on conforming to which a license shall be allowed, “authorizing” the hoarding or scaffolding named in it, for a limited time.

inhabitants can give efficient aid. The work is for the good of all. All are affected by the way in which it is fulfilled. It is of that kind which can never be thoroughly or satisfactorily fulfilled, unless all feel that they have a part and an interest in it. Each man may take in turn the office of Surveyor, or of member of a Highway Board. But whoever fills such an office, should be able to count upon the cordial aid of his neighbours. It is certainly the best when a Committee,* or a "Board," is formed; by which a nearer interest is roused in several. On such Committee or "Board" there should be representatives from all the several parts of the parish. Such a machinery is the most effectual means of realizing the full activity of that principle on which the maintenance of every free State depends;—namely, that in every local community, each man feels that he owes it as a duty to his neighbourhood to contribute what he can, by mutual personal action, to the common good and welfare of the whole.

In the great rage which exists, in our time, for a continual meddling with everything by experimental legislation, and for enforcing Procrustean schemes which are felt to be so wanting in truthfulness or intrinsic merit that they have no hope of making their honest way in public opinion, the Laws relating to Highways have been, and are, a favourite matter with which some Legislators are eager to tamper. In the Session of 1854, a Bill was introduced into Parliament for making Highway functionary "Districts," in place of the present system of Local Management. Member after Member rose, all dissatisfied with the particular proposal, but most of them hankering after some change of the like nature. Not a single practical idea was expressed by any speaker: nothing was uttered but what showed that all the speakers were entirely ignorant of the nature of our Institutions and their working.† The only im-

* See before, pp. 111, 244, 256.

† What was said on the above occasion, and is so often said, about "representative element," is merely a specimen of that unmeaning jargon through which it is sought to delude men, by mere names, into submitting to have all reality and responsibility taken out of their hands, and to let a mere clique or oligarchy be invested with practically irresponsible power. A Highway Board, under the Highway Act of 5 & 6 Wm. IV., is a true Representative Body. Where this exists, the work is usually well done. There needs but the recognition of a greater facility (in accordance with the Common Law) for the appointment and action of such Bodies in every Parish,—without pedantic restrictions to any minimum of Population.

pulse clearly was, to experimentalize and unsettle, and to devise means for fettering the action of those most immediately concerned in the condition of the Highways. The increasing want of any practical knowledge on all these classes of subjects is daily shown in Parliament. The growth of Bureaucracy in England has led to this:—and Bureaucracy now systematically seeks to take advantage of it, to its own further aggrandisement. Hence the mass of crude experimental legislation of our day. The Members who complain of the state of the Highways, ought to know that, if they fulfilled their own duties in their own neighbourhoods, instead of uttering complaints in the House of Commons, the means already actually exist to bring about every wholesome remedy. It is but the want of real knowledge in those who call themselves “educated,”* and the consequent want of sound example and action, that leads, anywhere, to want of due care in all that concerns the Highways. And it is, more than anything else, owing to the weakening of the full sense of responsibility, both in officers and Vestries, through the modern innovation, abortive as it is, of certain references to justices (quite inapplicable in such matters†), instead of the old periodical and unevadible inquiries, that the want of an efficient discharge of their duties by some Highway Surveyors, and the non-acceptance of the office, often, by the best men, are owing. What is needed in all these things is, to make the mutual responsibility, equally of those concerned and of those entrusted, really actual and felt; not allowing irresponsible parties, such as justices, to interfere in any way, *except* on specific cases of complaint or penalty.

Making “districts,”—which seems, just now, the favourite scheme of the experimentalists,—would, necessarily, only make things worse than they now are at the worst. The ordinary size of Parishes is quite large enough, that the actual eye of those concerned may keep watchful attention on the fulfilment of their duties by the Surveyors. The more the area is enlarged, the less vigilant attention is it possible for those concerned to give: the more actually irresponsible, therefore, necessarily becomes every officer.‡ The great object of

* See before, pp. 219, 220.

† See before, p. 113.

‡ See before, pp. 111, 167. I have elsewhere shown that the increase of

the true Statesman will always be to fix, in every man, as near and immediate a sense of interest and responsibility as possible.

Intimately mixed with such questions is always one far beyond the mere material one. It is the fashion of our time to look at everything only from this mere material point of view; to reckon excellence by cheapness only; and to estimate every proposition according to its fancied material results only. But it is far beyond all these things in importance, that the moral energies of men should be maintained ever active at their highest tone. It is of the highest importance, socially, intellectually, morally, and therefore politically, that every possible inducement should, at all times, be held out to men to see and feel and recognize, as an habitual part of their being, the duties of citizenship,—the responsibility which each man owes to his neighbours and his neighbourhood. All the modern experimentalists, including those who would tinker at the Law of Highways, look only at man as an automaton machine, having selfish material concerns as the sole aim and end of life. They judge of others by themselves. They assiduously pander to the selfishness of men, in order that the system of functionarism may be extended. They parade pretentious but unreal “improvement,” specious but most mischievous humanitarianism, and self-exalting but hollow philanthropy, to cover the eager grasping after patronage.*

The system which would do everything *for* men, instead of calling upon the intelligence and responsibility of all men to do, themselves, what concerns them, does but offer a bribe to sheer slothfulness and selfishness, to shun the trouble of that exertion, whether of thought or action, which is necessary in order to maintain the spirit of manliness, and the consciousness of independence, and the reality of self-respect, as well as the course of true enterprise and sound progress. Despotism always covers its encroachments under the mask of some fair pretences. The worst form of despotism is the silent enslaving of a nation by Functionarism and Bureaucracy. The means by

population and means of intercommunication, instead of being a ground or reason for centralization, is one of the strongest reasons for more thoroughly developing the action of Local Self-Government. See ‘Local Self-Government,’ etc., p. 48. This is a very important point.

* See before, p. 215.

which these foes to our institutions and liberties, have made and are still making their way in England, are, by continual appeals, under the cloak of philanthropy and "reform," to the material and selfish interests and slothful temper of men immersed in the eager pursuit of self-aggrandisement.*

It matters not whether designs and attempts such as these exhibit themselves in matters of Highway management, or under any other cover. They are equally characteristic of a Jesuitical and profligate system, the most dangerous to the true interests and welfare of humanity; the most fatal to the liberties of Englishmen.

The present Highway Act is certainly not without several imperfections. But it is far freer from these than most Acts of Parliament. It is absolutely certain that it is, in every way, more practical and satisfactory than any act that would be passed now, when less and less practical knowledge of all such questions is daily shown by those who assume the task of Legislators.†

* See 'Local Self-Government,' etc., chap. xii. :—" *How may freedom and human progress be most successfully attacked.*"

† See before, pp. 116, 220 note *.

SECTION II.

WATCH AND WARD.

PROTECTION OF PERSON, PROPERTY, AND RIGHTS ; AND PROSECUTION OF
WRONG-DOERS AGAINST EITHER.

It has been already shown that the present practice of watch and ward is in an anomalous state. It is wholly inefficient and unsatisfactory : and it is so, simply and demonstrably, because it has departed from the sound principles and practice of the Common Law.* Those principles and practice are based upon the idea of *responsibility* ; the responsibility of every place to every inhabitant thereof, and of every place to the whole State, that watch and ward shall be duly kept therein, and the public peace maintained. These principles being maintained in action, the interest of every individual is felt to be identified with that of the whole place : the interest of the whole is identified with that of every one of its members.† Every motive is directed to the prevention of crime. Functionarism is not allowed to put in its hand, in order to make a gain out of what is against the common interest. A premium is not allowed to be held out to the fostering of crime, in order that its fosterers may seem zealous in its exposure, while profiting by its perpetration. The State, and every place, and every individual, suffer alike from every step towards a departure from these principles and practice. And it is not until these are returned to, that the public

* See before, Chap. III. Sec. 3.

† “The several householders being, in this manner, responsible for the orderly and regular conduct of their families ; the Tything for its householders ; the Hundred for the Tythings ; the Trything for its Hundreds ; and the whole County for the Trythings ;—every one was under a sort of necessity to keep a watchful eye over his neighbour’s life and conversation ; and to consult the public good, by taking all due care, that the speediest punishment should be inflicted for every breach of the laws : *so that it was hardly possible for a malefactor to escape with impunity, whilst it was made the interest, as well as the business, of so many different persons to bring him to immediate justice.*”—Archdeacon Squire’s ‘Inquiry into the Foundation of the English Constitution,’ pp. 241, 242.

service in this behalf will be well fulfilled, or an economical, responsible, or thoroughly efficient system of watch and ward exist.

Efficient action on this matter was formerly unevadible. It will be useful to show, in as few words as possible, the practice followed under the Common Law, in order to prevent the evasion of responsibility, either by any *place* or by any *officer*.

This practice consisted, as already hinted, in public inquiries, regularly and periodically made in every parish, in every hundred, and in every county; and which went directly, both to the happening of any *facts* of wrong-doing, and to the discharge, by every *officer*, of his duties.* It will be at once seen how close an observation was thus kept on the fulfilment of all matters that concern watch and ward, as well as upon other things touching the general welfare.

The following is an example of the things thus regularly put before the sworn jury of freemen in every place; and which had to be everywhere answered:—"Whether the Roll [of inhabitants] is complete. Whether any have gone away under any circumstances of suspicion.† Whether all on the Roll have come up to the Folk-mote.‡ Touching burglars, thieves and robbers, forgers, murderers, house-burners; and the accessories and harbourers of any of these. Touching outlaws and returned convicts. Touching treasure-trove, murders, and stolen goods found and kept. Touching gaol-breach, rape, abduction; and wrong-doers in parks, burrows, warrens, etc. Touching maimings, assaults, false imprisonments, and other breaches of the peace. Touching usurers, traitors, etc., and their harbourers. Touching petty thefts. Touching the hue and cry wrongly raised; or, if rightly, not followed up: who raised it, and *by whose default suit was not followed up*.§ Touching land-marks broken, removed, or altered. Touching watercourses turned or obstructed. Touching ditches, walls, water-banks,

* See before, pp. 23, 46, and after, 375, 385, *notes*.

† It is curious that Mr. Justice Coleridge, in his valuable edition of Blackstone's Commentaries (vol. iv. p. 301 *note*), should have stated that he is "not aware that this was ever made a substantive matter of inquiry." Nothing can be more precise than the above.

‡ See before, pp. 60, 61. The device of Polling is a direct violation of the Common Law. All must come to the *mote* ("moot;" "discussion") itself, or they fail in a positive obligation.

§ That is, what officer neglected his duty, if the duty was neglected. See before, pp. 128, 129, and *notes*, as to hue and cry.

pools, or anything of like sort, meddled with, damaged, or otherwise, to any man's hurt. Touching ways and paths wrongfully obstructed or narrowed. Touching false weights and measures. Touching watch and ward not duly kept, and highways not well maintained. Touching bridges and water-banks out of repair;" etc. etc.*

These searching inquiries into the due fulfilment, and into all breaches of the due fulfilment, of the duties and responsibilities of every neighbourhood, were not rare and occasional. They were, as they ought still by Law to be, regular, periodical, and frequent. They were made by the Local Body itself in every Parish; but they were also made before the Sheriff in his biennial Tourn or circuit in every Hundred; and again before the representative of the State,—the Justice in Eyre; as well as on other occasions.† The constable had to see, in the meantime, that things were rightly kept, so that these inquiries might be answered without the place incurring those penalties which inevitably attached to it in any case of neglect. Such are the thorough methods provided by the Constitution for ensuring full

* See 'Local Self-Government,' etc. p. 298, *note*. The Articles of Inquiry above given are from Fleta, as quoted in the place cited. Other articles, embracing, in different words, the same subjects, will be found in Horne's 'Mirror of Justices,' chap. i. sec. 17; and in the large folio edition of the Statutes, vol. i. p. 246.

I might quote numberless authorities as to the practical use and the details of these articles of Inquiry. The above is selected for its brevity. I content myself with further referring to Kitchen's 'Court Leet,' pp. 8*b* to 53*a*, and to Lambard's 'Eirenarcha,' pp. 420–484; where the articles of inquiry, condensed above, will be seen at much fuller length. See also the illustrations which I have quoted in 'Practical Proceedings,' etc., pp. 5–9. Had the Committee of the House of Commons in 1855–6, on 'Public Prosecutors,' really desired to search out the truth, and give it a practical direction, instead of merely making itself the instrument of *getting up a case* on behalf of functionarism, it would have directed its investigations to the mode in which these systematic *inquiries* were made and followed up; and when and why, and by whose neglect, the habit of them has fallen into disuse. Instead of this, points so directly practical were carefully omitted, or rather *refused*, to be inquired into, because they would obviously have brought out facts that would tell against the object for which the Committee was appointed,—namely, at whatever cost to the public interests, to get up a case for the increase of Ministerial patronage. See after, p. 387.

It is proper to refer here to the *Inquisitiones Nonarum* (often mentioned in the text) and the *Hundred Rolls* (published by the Record Commission in 1818) as apt illustrations of the adaptability of this system of Inquiries to any sort of circumstances that may arise.

† See, for example, pp. 35, 107.

responsibility, and the constant sense of it, and so preventing wrong-doing. It would be well if those who are for ever dabbling in legislation, after the empirical fashion of our times, would set themselves to understand these practical methods of the Common Law.* They are all available now. "Every act of injustice or vice whatsoever, and even mere immoralities, are within the cognizance of the Courts Leet; which are competent in themselves to find a remedy for every inconvenience, without searching for Acts of Parliament."† But the rage for empirical dealing, and the grasping aims of functionarism, have made these and their invaluable working forgotten. Hence all the interests of every Parish in England, the public peace, the safety of person and of property, and the general *tone* of society, suffer grievously. Hence wrong-doing and outrage spread themselves, without remedy;—the wrong-doers relying for impunity upon the risk, cost, and trouble to *individuals* of prosecution. Hence "Police" devices and summary jurisdictions are reared up;—utterly inefficient as means of true and permanent watch and ward, and which actually give to functionaries a selfish interest in the existence of the very wrongs of society, instead of its being felt to be the interest of all that such wrongs shall not happen. The practical means that have been alluded to, show that home to every man's door there is, according to the real practice of true English Institutions of Local Self-Government, the continual opportunity to be brought, by speedy and costless means, of righting every grievance, and hindering every wrong. No mere "Public Prosecutor" could ever be so efficient, either to keep check on wrong-doing, or to keep men up to the mark of their social duties and responsibilities. Is the nineteenth century, which cannot comprehend these simple and practical means, truly so far advanced in civilization as is pretended?‡

* The before-named Committee on 'Public Prosecutors' went far and wide for so-called evidence that it was thought would suit their object; but *carefully* omitted any inquiry into the actual Law of England itself!

† Granville Sharpe's 'Congregational Courts' (1786), p. 140. And see before, pp. 23 *note* †, 216.

‡ In an article of 5 September, 1856, the *Times* Newspaper calls attention "to the inactivity in our legal system which often succeeds the commission of a crime, before it is possible to take out a warrant." And it proceeds urgently to recommend—as if it were a brilliant new idea—the practice of systematic Inquiries. Its words are:—"Take a case, the vaguest of all, in which

It is not so very long since the above system was in action in every Parish. "The Courts Leet and Court Baron," says Whitelocke, "are still in being in the country, retaining the same name and nature they had before the Conquest. Surely," he well adds, "that old way of *justice at home*, and the exact division of it, caused great ease and safety to the people."* Coke himself says:—"The articles inquirable in the Tourn are known, and [therefore] need not be here rehearsed."† Selden says, in his 'Titles of Honour,' that "the Sheriff's Tourn is at this day."‡ At the conference between the two Houses of Parliament, preparatory to the passing of the Petition of Right,

an offence has been committed, but no one accused. There is at present no authority vested in any person to investigate such a case, except in the event of death, when there immediately follows a coroner's inquest. The burning of Covent Garden Theatre supplies an illustration in point. Although we have no reason to say that it was the work of an incendiary, still at the time suspicions were raised, rumours were afloat, the circumstances under which the fire took place were not creditable, the injury inflicted was enormous, and the whole affair required investigation. Ultimately the coroner of the district instituted an inquiry; but it was some time after the event, and it was by an unusual, although very proper, stretch of his authority. Now, it very often happens that in cases of arson and other heinous offences the guilty party can only be detected by a chain of circumstantial evidence, the various links of which are not likely to be collected except by a public investigation of this kind rapidly following the event. It is quite clear that the sooner such an investigation ensues the better, even if nothing comes of it; for, while in many cases the offenders who are now permitted to escape through delay will be brought to justice, *the mere fact of an inquiry necessarily following every notable outrage will act as a powerful preventive.*" This passage is well worthy of attention. It gives an illustration of the language of Lord Coke, when he says that, "albeit sometimes by Acts of Parliament, and sometimes by invention and wit of man, some points of the Common Law have been altered, or turned and diverted from their due course, yet, in the course and revolution of time, the same, as *the safest and faithfulest pillar and bulwark of the commonweal*, have ever been, with great applause, for avoiding of many mischiefs, restored again."¹ The inquiries thus recommended by the *Times*, are what the Common Law enjoins, and what used to be the uniform *practice* under it.

* 'Memorials,' vol. ii. p. 420; and see Coke, Fourth Institute, p. 267:—"As the Leet was derived out of the Tourn *for the ease of the people*, so this Court of the Hundred, for the same cause, was derived out of the Court of the County." See a remarkable and very note-worthy Statute (18 Hen. III.)—strangely enough not to be found in any edition of the Statutes—published at full length in Prynne's 'Parliamentary Writs,' vol. i. (Introduction), and also in his 'Animadversions, &c., to Coke's Fourth Institute,' p. 189; and of which I have given a translation in 'Local Self-Government,' p. 219.

† Fourth Institute, p. 260 (1644).

‡ P. 628 (edition 1631).

¹ Preface to 3 Coke's Reports, p. xviii.

—which conference was managed, on behalf of the Commons, by the bearers of the illustrious names of Sir Dudley Digges, Sir Edward Littleton, John Selden, and Lord Coke himself,—Sir Dudley Digges expressly reminded their Lordships, *in proof of the stability of our free institutions*, and of the importance of maintaining that stability, that, while we have Parliaments on the one hand, “*we have now*,” as our fathers had, and of at least equal importance to Parliament, “the Court Barons and Court Leets, and Sheriff’s Courts [Tourns],” whereby right is rendered in every village;*—a passage of particular significance when it is remembered that it was thus uttered in support of the Petition of Right. Lord Bacon himself incidentally remarks that “all those courts before-mentioned *are in use and exercised as Law at this day*, concerning the sheriff’s Law-dayes [Tourns] and Leets.”†

To quote no more such proofs of the departure of our time from what was so lately and wholesomely in practice, I will only add, that every lover of his country and its welfare will feel the full force of a most statesmanlike remark, made immediately after the turmoils which first gave the opportunity of unsettling the action of these Institutions:—“I wish we now could, or could ever hope (whatever promises may be made us) so perfectly to distinguish the Legislative from the Ministerial authority as once we did; when the House of Commons had not the power of a Court Leet to give an Oath, nor of a Justice of the Peace to make a *mittimus*: which distinction, doubtless, is the most vital part of freedom; as, on the contrary, the confusion of them is an accomplishment of servitude.”‡ “I desire,” the same writer says, “all our Projectors of Commonwealths, to contrive greater freedom for their citizens, than is provided by *Magna Charta* and the *Petition of Right*; or show us, that it is not much easier to violate than to mend them.”

* ‘Report of the Conference of 3d April, 1628.’ See Rushworth’s ‘Historical Collections,’ vol. i. p. 533; where it is put, however, under date of 7th April. I quote from the original.

† ‘The Use of the Law,’ ed. 1635, p. 9. Many other authorities, and of later date, might be added. I quote the above on account of the reputation of these givers of the testimony.

‡ ‘A Plea for Limited Monarchy, as it was established in this Nation before the late War. By a Zealot for the Good Old Laws of his Country, before any Faction or Caprice,’ 1660, p. 7. I wish space allowed me to quote more of this admirable tract.

The History of England, since this was written, has been a continued illustration of its truth.*

One form of the Courts and habitual Inquiries that have been alluded to, does indeed still exist in active vigour,—as if to remind men of the nature and value of a practice which was formerly universal. The Coroner's Court remains in daily use; and there is no Institution in England of more essential importance and more constantly illustrated value.

The Coroner himself is an elected Magistrate. He holds the next rank in the county to the Sheriff; and is, indeed, in many cases, substituted for the latter. It is greatly to be regretted that the true character and dignity of this office are not better understood. Coroners are Conservators of the Peace at Common Law. They are the principal Conservators or Justices of the Peace within the county. They take precedence of all those justices who are, as it is termed, in the Commission of the Peace. The latter are of far more modern origin,† and owe their existence and powers only to Statute.

The Inquiry, or "Inquest" as it is commonly called, is not held *by* the Coroner; it is held *before* him. It is held *by* the free men of the neighbourhood. This Institution is peculiarly connected with the Institution of the Parish; inasmuch as the earliest statute upon it,‡ declaratory of the Common Law, records that the jury is to be summoned from "four of the next towns [Parishes], or five, or six;"§ and the Statute of Exeter, passed ten years later, has been already quoted in illustration of the same point, in the method it requires to be followed in inquiries as to the discharge of their duties by Coroners.

Notice of the death is usually given by the Churchwardens

* In John Evelyn's Diary, under the date June 11, 1652, it is related that, going from Tunbridge Wells, he was robbed, on the 23rd June, at a place called Procession Oak, about three miles from Bromley. He caused Hue and Cry to be made, and took the other usual measures to trace the stolen property. Within two days, he had tidings of all he had lost, except his sword and some trifles. That is to say, the Common Law methods were then in efficient activity, notwithstanding that this was the time when England had been lately torn with civil war. In our days of functionarism and "Police," it is quite certain that, instead of getting such tidings of his property, all the satisfaction he would have ever got would have been to see them catalogued in the "Police Gazette" with all the formality of red-tapism.

† See before, p. 128, note ‡.

‡ 4 Edward I. stat. 2.

§ The Corone.'s Jury is not limited to twelve. It is usually fifteen or eighteen. The Jurors must themselves sign the Inquisition found.

or Overseers, or by the Beadel acting for them. But this need not be so. Any person may give notice to the Coroner; and the place is liable to be amerced—part of the system of responsibility already dwelt on—if notice be not given, or if the body be buried before the Coroner comes. It has already been shown that the Jury is summoned by the Constable of the Parish, or by the Beadel as his deputy in that behalf.*

It is the duty of the Constable, at Common Law, to act, on behalf of the Public, in every case, whether of Inquiry or Trial. He is the constitutional Public Prosecutor. This is at least as important a part of his duties as any that attaches to him. His fulfilment of this duty is one of the matters that the Common Law requires should be regularly inquired into.† Under the

* See before, p. 191.

† It will be instructive to give a few extracts, showing that the Responsibility of the Parish and of its Officers is real at Common Law;—though unhappily that of both is neglected in these days of “progress.”

“Also ye shall enquire, if any man be slain or murdered by the day, whether the murderer be taken by the township where the death or murder was done; for if he be not, the township shall be amerced.”—‘Boke for a Justyce of Peace,’ p. 9; 1541.

“Also ye shall enquire by your oaths, if the constables, ale-conners, bailiffs, or any other officer that belong to this lordship, have truly and duely done their office or no.”—‘Boke for a Justyce of Peace: Charge of the Leet;’ 1541.

“The sheriff in his tourn hath authority to inquire of all the defaults of Mayors, Bailiffs, High Constables, Petty Constables, and all other governours, and of other governours and officers of cities, towns, and villages, within their tourn.”—‘The Offyce of Shyryffes.’

“Si un soit murder in un ville par le jour, et le murderer eschape sans estre prise ou arrest par ceux de la ville, icy ceux de la ville serront charges de cest eschape: ils serrount amercies pur ceo. Mesme ley est ou un occist auter par misaventure ou se defendendo, et eschapa; la ville ou le tuer fuist serra pur ceo amercy.”—Standford’s ‘Pleas of the Crown,’ p. 33 (b).

“If any constable, borsholder, or tythingman have not done his best endeavour to apprehend such rogues as have begged, or made abode within their limits, or have wilfully suffered any of them to escape punishment.”—Lambard’s ‘Eirenarcha,’ p. 444.

“The constable, or such other of the said officers, having arrested any to be conveyed to the gaol, must take good heed that he do not willingly, or negligently, suffer such party to escape from him. For if the arrest were for felony, then by a willing escape, the officer himself becometh a felon also. And of whatsoever other kind the offence be, if the officer do by his will or negligence, suffer the party to escape from him, he shall be fined for it, according to the quantity of his fault, by the discretion of those that shall be judges of it. And lest any such officer should flatter himself in thinking that he may pass through with some easy fine, I let him know, that the

entire perversion that has taken place, in recent times, of all the Law securing the public safety, this point has, among others, been left unheeded. Hence, whether it be in the Metropolis, where only a hired and centralized Police exists, or in the country, where there is also a hired and practically centralized police and the parish constableness has, by the means already shown,* fallen into hands very different in efficiency from what it used to do, the efficient means of prosecuting either any inquiry or trial have become destroyed. It thus happens that crime oftentimes goes unpunished, and wrong-doers walk abroad with impunity. There is, except in the Coroner's Inquest, no system of constant warning. And the neglect by the Constable of the duty he ought to fulfil on behalf of the public, is gravely felt at Coroner's Inquests themselves. It has occurred within my own knowledge that the plainest case of aggravated manslaughter has gone unmarked and unrebuked, through this cause. Similar cases are occurring daily;—and they must do so while a hired and irresponsible Police is allowed to take the place of the Common Law system of responsibility.

The Coroners ought, by law, to hold their inquests more frequently than they do, and in a wider range of matters.† But, though their office is a far more ancient one, and of far higher dignity, than that of ordinary Justices of the Peace, the misconstruction of a modern Act has done all it can to destroy the value of the Institution, by letting in the unconstitutional notion of the payment of the Coroner's fees being subject to the supervision of the latter Justices.‡ A greater absurdity,

judges of his fault may set his fine, equal with the value of all his goods, if in their discretions his default do so require.”—Lambard's ‘Duties of Constables,’ p. 22.

* Before, pp. 119, 126.

† “Where any be slain, or suddenly dead, or *wounded*, or where *Houses are broken*, or where treasure is said to be found,” are the express words of the 4 Edw. I. “Houses broken” includes those burnt. See Articles of Inquiry above, p. 367, and after, p. 379, *note* *.

‡ This has not followed from any intention or logical construction of the Acts of 25 Geo. II. c. 29, and 7 Wm. IV. & 1 Vict. c. 68; but, on the contrary, from a forced and unsustainable construction only. The words “duly taken,” the perversion of which forms the sole ground of the unconstitutional innovation, clearly refer, not to any *discretion* as to holding an Inquest, but to the regularity of the order of proceeding at the Inquests. This is conclusively proved by comparing section 2 of 25 Geo. II. c. 29 (as to deaths in gaol) with section 1 of the same statute. The words “duly taken” are used in each case, though it is not pretended to be doubted that an In-

and a more mischievous innovation, cannot well be conceived : a thing more diametrically opposed to the very spirit of the Institution it were impossible to devise. The great object of the Common Law, in this Institution, is, that there shall no man die, otherwise than by the clearly ordinary course of natural and obviously pre-existing disease, without a searching inquiry being made as to the actual facts attending the death :—and this, *whether or not* there be any *suspicion* of foul play. Every case of *sudden death*, or of death following from accident

quest is *bound* to be held on the Body of every Person dying in gaol or prison, “to the end it may be inquired of *whether* he came to his death by the duress of the Gaoler, or *otherwise*.” (Coke, 3 Inst. 52 : and see quotations below ¹.) It is, most illogically, and in direct contradiction to the Statute of Coroners itself, pretended, that, though a man “dies suddenly,” if it be a *natural* death, no inquest need be held. Coke’s words, above, are the plain Law, and the only possible logic. His words elsewhere are :—“in case where any man come to violent *or untimely* death.” (2 Inst. 32.) It can only be ascertained *by the Inquest, whether* the sudden death be a natural one, or from some extraneous cause. And, whether it be a “natural” one, as it is called, or not, it is equally important to the health and safety of the people, that the true cause of such unusual, because sudden, death should be known, even though it be proved to arise from natural causes. The Common Law and the Statute of Coroners are perfectly clear. The Coroner has a plain duty. He is *bound* to hold an Inquest in *every case* of sudden death ; and is liable to be heavily amerced if he does not do this. Whether the Statute of Coroners is declarative or enactive, this is equally clear. The Act of 25 Geo. II. c. 29 was intended to ensure the fulfilment of the Coroner’s duties, by securing his fees ; not to dissuade from it, by making these subject to caprice, as is the necessary result of the illogical and unconstitutional interpretation that has been put upon the Act in *R. v. Justices of Kent*, 11 East, 229—where the point was, however, not at all considered—followed by *R. v. Justices of Carmarthenshire*, 10 Q. B., 796. The latter case (in which the propriety of the inquests was plain) has so far returned to constitutional principle as to decide that all the expenses that have been incurred by the Coroner in any case are, under any circumstances, to be repaid to him. All expenses of medical witnesses, etc., are thus included.

Had the Legislature intended to give this unconstitutional power to Justices, the words used would have been “duly held,” and not “duly taken.” The former are the words always used in describing the assembling of a Court ;

¹ “He ought to inquire of the death of all persons whatsoever who die in prison, to the end that the public may be satisfied *whether* such persons came to their end *by the common course of nature*, or by some unlawful violence, or unreasonable hardships put on them by those under whose power they were confined.” 2 Hawkins, P. C. c. 9, s. 21. “If a prisoner in gaol dies a natural death, yet regularly the gaoler ought to send for the Coroner to inquire, *because it may be possibly presumed* that the prisoner died by the ill-usage of the gaoler.” 2 Hale, P. C. 57. See *note* * on the next page.

or *force* of any kind, ought, without exception, to be inquired into. Besides this, all cases of death under special circumstances—such as of persons in prisons, workhouses, asylums, hospitals, or under any form of duress—ought to be inquired into. The Common Law of England sets so much value on human life that it requires this.* It is *imperative* on the Coroner to institute the Inquiry. He has no *discretion* in the matter. It is needless to point out how the true principle of watch and ward is thus carried practically out, and the public safety served. It is in addition to these instances, that every case of suspicion or doubt should be inquired into. The *result* that may happen to be found in any case, is no test of the propriety of inquiry;—as the marvellous wisdom of Justices would often endeavour to represent. If the result could be known beforehand, no inquiry, on any subject, need ever be held. It ought to be satisfactory to find that there has been no foul play. It shows a most un-

and this is what it is attempted, by this misconstruction of the Act, to control. On the other hand, the words “duly taken” are correctly used in respect to the taking of the Inquisition; as, if an Inquisition is not rightly taken (for which see after, p. 381) it is void, and liable to be quashed. It would obviously not be right for the Coroner to receive his fees for Inquests thus not “duly taken.” Hence the use of the words in the Act; which are correctly so used. “The first question which the Court has to decide is, whether the Coroner has taken any Inquisition at all? If he has not, he is not to be paid for what he has not done.” Lord Kenyon, C. J. in *R. v. Norfolk*, 1 Nolan 141; a case which seems to have been singularly misunderstood.

There are other attempts continually going on, on the part of Justices—that is, of those of the Body who are unable to appreciate the Institutions of their country—to undermine the office of Coroner altogether;—by illegally detaining accused persons from attending the Inquests; and by various other means, as contrary to Law and Right as they are to the Common Interests of the Public and of Justice.

* An illustration of the importance of this was afforded in the year 1853; when, solely owing to an inquest held on a death within the prison, certain tyrannical and illegal proceedings of the prison authorities of Birmingham were exposed, and so put an end to. The impropriety and even indecency of the Justices assuming this unconstitutional control over the Coroner's Inquests, is strikingly proved by the case of inquests on deaths in prisons. The Justices have the control over the prisons. An inquest on death in a prison is, therefore, practically an inquiry into the propriety and efficiency of the conduct of the Justices. And it is pretended that the Coroner, an officer superior to them, whose Court makes this inquiry, shall be afterwards subjected to have his fees discussed by them! It is difficult to conceive anything more anomalous. It is self-evident how gravely the public interests must suffer from such misconstruction of the Law, and consequent illegal proceedings.

wholesome state of mind and a remarkable incapacity for reasoning, when it is sought to be made out that, in every case, there must be a foregone conclusion of foul play; and when inquiry can only be deemed right if the result finds this. This is the very opposite to the spirit and principle of the Institution itself. You may possibly find poison, for instance, if you search into the cause of death: but if you are never to make search until you are certain, beforehand, of finding poison, it is useless searching at all. Let crime go free; and the care of its perpetrators only be given to devising the most secret modes of doing its unholy work, assured that the wisdom of *Justices* will then protect it from inquiry. This is the necessary, and the actual, result of the novel and unconstitutional misconstruction of the Law upon this subject. A premium is, in fact, plainly held out to the bad, when the searchingness and inevitableness of inquiry are checked by the practical threat, that the payment of fees will be disputed, unless the verdict in every case tallies with a foregone conclusion, or with the self-love of the *Justices* themselves. Craft and cunning are thus but set at a higher value, in order to conceal the obvious marks of guilt, and so deter the Coroner from an Inquiry. Such is the mischief produced by the misconstruction of a very plain Law; and such are the frequent exhibitions of modern *Justices'* wisdom.*

Many other unlawful and most mischievous attempts have been

* Illustrative cases are daily occurring. The following is one which takes place while these pages are passing through the press:—On Wednesday, 7th Jan., 1857, an inquest was held at Cheltenham, respecting the death of a young woman named Mary Ann Gilkes. The peculiarity of the case is, that the birth of the child was not discovered until after the burial of the mother. A medical gentleman who attended the young woman, gave a certificate that she died from epilepsy produced by exhaustion, and the Coroner, *in the exercise of his discretion*, had refused to hold an inquest, until after the discovery of the body of the child. That circumstance, however, led to the exhumation of the body of the mother, and, after a long inquiry, the jury returned a verdict that Mary Ann Brunsley Gilkes had died from epilepsy, arising from exhaustion through loss of blood and neglect in her confinement; and that the child had died through the wilful design or neglect of the mother, who was therefore guilty of “Wilful murder.” After some remarks from the Coroner, the foreman of the jury stated that they wished to make the following addition to the verdict:—“We, the jurymen empaneled to inquire into the cause of death of M. A. B. Gilkes, being ratepayers of the county of Gloucester, *having noticed the discussions which have of late taken place in the court of quarter sessions with regard to the holding of inquests*, express our unanimous opinion that *the tendency of the interference of the magistrates in control-*

of late years made, and are being continually made, to tamper with the Institution of the Coroner's Inquest. Every such tampering is a premium upon crime; a practical perversion of the Law to shelter and so foster crime. There is no part of our existing criminal process so valuable as is that of the Coroner's Inquest; none which serves so many public interests; none which affords so great and daily a protection alike against private crime and malice, and against the uncarefulness (not to say recklessness) of public companies, and the risks arising from competitive enterprise.

The action of the Coroner's Court affords a striking illustration of the obvious superiority of the working of the English Constitutional System, over the empirical nostrums of those who, if not simply self-seeking, show themselves equally unfamiliar with the spirit and practice of the institutions of their country and with human nature, in proposing such devices as that of crown-appointed "Public Prosecutors." Leaving unfulfilled, as the very idea of such functionaries does, the most important part of what the public safety and welfare need, it leaves it to the caprice of a really irresponsible functionary to determine who shall be prosecuted; the fundamental point being lost sight of, that the main thing wanted for the public safety is a thorough search as to what cases *need* prosecution. The experience of the old Sheriff's Tourns, and now daily of the Inquiries by Coroner's Juries, proves that this is the task, the good execution of which is of the first importance to the prevention of wrong-doing.*

In reference to the right action of the Coroner's Court, this being a matter which essentially concerns the safety, and sense of security from hidden crime, of every village and corner of

ling the discretion of the Coroners, and which, in this instance, nearly caused a miscarriage of the course of justice, is calculated to diminish the safeguard which the full discharge of the duties of the ancient office of Coroner had thrown around the lives of the people of this country."

* The objections that have been sometimes taken to resolutions tacked to the findings of Coroner's inquests, are entirely founded upon a misapprehension of the function of such a jury. It has not to find a verdict of 'guilty' or 'not guilty.' It has to find *how such a man came by his death*, etc. In order to do this, the jury is bound to go into any and all collateral circumstances. Its finding may be as long as it likes. The objectors (some even on the Bench) forget that even a Bill of Indictment, of ever so many counts, is but the sworn *finding* of another jury,—analogous in many respects to the Coroner's Jury,—viz. the Grand Jury.

the land, a few practical points shall be noticed. Whenever a sudden or suspicious death occurs in any place, every inhabitant should feel it his duty to see for himself that these points are fulfilled. Every man should feel that he has an interest in the Coroner's Court being held in as much respect as possible, and in its duties being rightly and thoroughly fulfilled.

First : Whenever the coroner learns, whether from a parish officer, or from any inhabitants, that a sudden death, or one doubtful, or in gaol or other public institution, has happened,* he is bound forthwith to "go to the place" where it has happened, and there hold an inquest.† The pretence of his exercising any discretion as to whether or not this shall be done, is unlawful, and would be in the highest degree detrimental to the public interests.‡

* I do not re-enumerate wounding, house-breaking, etc. (including house-burning), though all these are within the Duties of the Coroner; and ought to be restored into universal practice. See 2 Hawkins, P. C. ch. 9, s. 35. That house-burning, and all cases of arson, are within the duty of the Coroner to make inquiry of, at Common Law, is plain from the 25th chapter of the Statute of Marlebridge. It is extraordinary that Coroners are allowed now, with a few exceptions, to omit this duty.

† "The Coroner need not go, *ex officio*, to take the inquest, but ought to be sent for." (Chief-Justice Holt, *R. v. Clarke*, Salkeld, 377.) But it is the duty of the parish to send for him,—a duty which devolves on the Constable, on behalf of the Parish. "If there be an unnatural or violent death, then indeed, if the Coroner be not sent for to view the Body, the town shall be amerced." 2 Hale, P. C. p. 54; and see *ib.* 1, 424; and 2, 57. "The Stat. of Edward I. declares that, 'when Coroners are commanded by the King's bailiffs, or by honest men of the county, they shall go to the places where any be slain, &c.' In such case, if the Coroner takes an inquisition, it is right that he should be paid for it." Buller J. in *R. v. Norfolk*, 1 Nolan 141. "If the township bury the Body before the Coroner be sent for, the township shall be amerced; and if the Coroner comes not, to make his inquiry, upon notice given, he shall be fined in eyre, or in the King's Bench, or before the Justices of gaol delivery." 1 Hale, P. C. p. 423; and see II. *ib.* p. 58.

‡ The illegal practices which have grown up in some places, in consequence of the unconstitutional misconstruction of the Statute named on p. 374, note, are truly alarming. Thus, I have it in writing (or it would not be credible), that, in a certain well-known city in England, where the penny-wise and pound-foolish system seems to be the predominating guide, "the Coroner sends an officer [a Policeman] to the place indicated; and, if the Officer is satisfied that the case is one of natural death, it is passed over without inquiry"! Such a systematic violation of the Law and of common sense is startling. It is, as shown above, a direct violation of the Law. If it were not, and if the Coroner might be allowed himself to exercise any discretion, he could never, most assuredly, be allowed to delegate his functions to a Policeman, who can have no capacity to discriminate what are cases of, so-called,

Second: The Inquest must be “*at the place.*” Some superficial persons, unable, seemingly, to comprehend more than the external tinsel of the administration of justice, and not its deep reality, have often sought to ridicule the Coroner’s Inquest because the Court sits at any private House it may find convenient, in the neighbourhood of the fact inquired into.* This is, however, one of the most admirable parts of the Institution. It has no cumbersome and costly machinery, which can only be worked by functionaries at some mysterious central abode. It brings the eye of the Law directly home to every spot; so that no fact shall escape the searchingness of direct inquiry, and that every man shall know and feel the immediate presence of the course of Justice.

Third: The jury should be summoned from “the four next towns (parishes†), or five, or six.” It is not well that the practice has not been kept up to this declaration of the Law. It is wise that those who sit on the Inquiry should not all come from one small corner, where they are likely to have some prejudice for or against the person injured, or possibly implicated, which may affect (however unwittingly to themselves) their mode of viewing the facts.‡ When they come from the “four next towns,” they have all the benefit of that general local knowledge which is always so important, and of the inquest being itself held on the spot; while they are free from such possible bias. I have known inquests utterly fail through this not being heeded. The Officer must not be allowed to summon the jury according to his own caprice. The Coroner and the public § ought to see and know that it is a jury which is likely

“natural” death, and who is always open to every unwitting (to say nothing of direct) means of being influenced in the opinion he shall report. The view is, very properly, required to be always made *by the Coroner himself, in person*. See 2 Hale, P. C. 58. Such a course of procedure as above-named, is neither more nor less than a total repudiation of the functions and Institution of the Coroner’s Court of Inquiry.

* See the very discreditable tone of the observations in a paper in Dickens’s ‘Household Words,’ vol. i. p. 109.

† See before, pp. 21, 33.

‡ The difference between consideration and discussion on a matter of common good, such as a Bye-law or the like, and the dealing with an *individual case of outrage* which is personal in its nature, must be plain to every judicious reader.

§ The four towns are summoned; that is, strictly, all the inhabitants; though, in fact, only a Committee (see before, p. 227) attend to make the inquiry. Hence the Court is public to all of those towns; but, at the same

to be impartial. If the address of each man be required to be given when he answers to his name, it will be a great practical help to securing this end. The instruction to the Officer should be, never to summon those nearest to the spot, nor all from one narrow space; but to summon, indifferently, the full number from different parts of the place.

Fourth: The Inquest cannot be taken on death or wounds except *on view of the Body*, nor on a fire without a view of the House. Some Coroners have fallen into the illegal practice of holding inquests without or before a view. Every such inquest is absolutely void.* The thing itself, the *way of the happening of which* has to be inquired into, is plainly the first fact that it is necessary for the inquirers to know. Otherwise they may, as in the well-known case of the Royal Society and King Charles's fish, be elaborately inquiring into the cause of that which never was a fact. A view of the place where the death or wounding happened is often also necessary. It is of the highest importance to the right action of the Coroner's court, and to the getting at true verdicts, that it be never allowed to be forgotten, or slurred over, either by the Coroner or any of the jurymen, that the *first* step is the *oath*: then, the *view* itself: then, the following this up by all possible investigation. The oath marks out the Court. A view without the oath having been first taken, is not a lawful view, because the jurymen have not then had themselves solemnly set apart for the inquiry to which this view is the first step; and, therefore, instead of holding themselves aloof from all external irregular communications,—which every one must recognize as a most vital practical point,—they are open to receive any such. The view must *always* be by the Coroner and the jury *together*, as the Court of inquiry.† It is the im-

time, as the whole have delegated to a Committee the actual task of making the inquiry, they can no longer claim the absolute right of being present at the proceedings, if the Coroner or the Jury think it, at any time, necessary for the ends of justice that any evidence be given before themselves only. This does not apply to the making the Court. The coroner cannot close the Court till it is formed: that is, till the inhabitants have seen that it is, as above said, one which they can rely on as a good Committee.

* Coke, 2nd Inst. p. 32; 2 Hale, P. C. 58, 59; 1 Hawkins, P. C. 79; 2 ib. ch. 9, s. 23.

† The meaning of 6 & 7 Vict. c. 83, s. 2, is by no means to do away with this rule, though it is vaguely worded, and had much better not have touched the subject. That Act expressly reinforces, however, the requisition that *there can be no inquest without a view, after oath*.

perative duty of the Coroner to prohibit and prevent—even by forcible expulsion and commitment if need be—any person whatever from speaking to, or holding any communication whatever, direct or indirect, with any of the jury during, or in going to or coming from, the view, whether this view be of a Body or of any place. When it is remembered that the Body always lies (with the rarest exceptions) either at a private house, or in some public Institution, it will be immediately felt that the only way to secure a true inquiry, is thus to prevent, most stringently, any communication between the jury and those who will always be on the premises, and who also have always a prejudice or an interest in giving, if they can, the direction of a particular and foregone conclusion to the inquiry. Whoever has anything to say that ought to be said, let him say it, in open Court, before the Coroner and Jury.

After the view, the Court adjourns to the nearest room where the inquiry can be conveniently and uninterruptedly proceeded with, and evidence is taken.

Fifth : The inquiry is to be made by all the evidence that can serve to illustrate it. It is most important to remember (what Coroners themselves often forget) that, this not being a case of *proving a charge*, but one of *inquiry how a fact* came about, the rules of evidence on the Trial of any charge, do not apply. Incidental evidence is, in these inquiries, often more important than direct. I have seen Inquests break down through the improper refusal by the Coroner to let such evidence be given. The Statute of Coroners itself says that it must be inquired what were the circumstances of *place*, and what *persons* were present. The individual facts of the death are often very simple, and go but a small way towards the actual point of “who (if any) were, and in what manner, culpable;”—which it is the end of the inquiry to find out. A long chain of antecedent circumstances often connects the incidental facts of the death with clear criminality of intent, or with that recklessness which constitutes manslaughter. All these antecedent circumstances must be gone into; and any attempt to shut this out, under pretence that it does not bear on the fact of the death, is but a smothering of the inquiry.* The end of the Inquest is thus defeated, and the verdict is wholly worth-

* “The Coroner’s Inquest may, and must, hear evidence of all hands, if it be offered to them.” 2 Hale, P. C. p. 157; and see 1 *ib.* p. 60.

less and void. It is well remarked, by one of the ablest and most experienced Coroners in England,* that "The evidence to be taken is, all facts sworn to by the witnesses, of *their own knowledge*, in any way affecting the Jury's verdict or 'touching the death.' Hearsay statement is of course not receivable as *evidence*, though it is better to let the witnesses say all they have to say, telling the Jury what part of it they can legally receive as evidence. Things dropped thus by witnesses often lead to important disclosures.

"Every person who says he has anything to say, ought to be permitted (after being sworn) to say it. Any person present who asks to be permitted to suggest a question to a witness through the coroner, ought to be permitted to suggest it, if it be a legal question. The jury should then be invited by the coroner to ask any questions they may wish to ask. And the accused person, if present, or his legal adviser,† or any friend or professional person present on behalf of the deceased, should be permitted, so long as he conducts himself properly, to put questions *himself* to the witnesses, instead of being compelled, as sometimes is the case, to ask them through the coroner.

"In charging the jury, the coroner has no right to direct the jury what verdict to find. If there has been no surgeon called in to make a *post mortem* examination, the coroner ought to tell the jury that they need not find the cause of death, but only whether the deceased died from *natural* causes; and if they are not *satisfied* of this, they should adjourn for the purpose of having a *post mortem* examination made.‡ The prac-

* Mr. Herford, Coroner for Manchester; from a communication with which I have been favoured by that gentleman.

† Though Mr. Herford thus puts it as to the "legal adviser" and "professional person," it must be distinctly understood that neither of these can ever claim the *right* to be heard. The practice of admitting them has lately grown to be allowed too much for the ends of justice. Their presence may sometimes be useful; but a technical cross-examination, however necessary to the rebutting of evidence on the trial of a *charge*, is certainly not always calculated to help in bringing out the fair and impartial evidence, in such an inquiry as that which is the duty of the Coroner's Inquest, in order to enable the jury to judge *whether a charge should be made* against any one. See as to this evidence, Buller J. in *R. v. Eriswell*, 3 Term Rep. 713.

‡ A majority of the jury may require the Coroner to summon further medical evidence. The Coroner has no discretion to refuse this, nor have the Justices any discretion to refuse the expenses. 6 & 7 Wm. IV. c. 89, s. 2. *R. v. Justices of Carmarthenshire*, 10 Q. B. 796.

tice of returning an open verdict of 'found dead,' without taking any medical evidence to ascertain whether the death was natural or not, is a slovenly and illegal one."

It must always be remembered that the Coroner's Court is not a court for trial. Its duty is, to find out the facts; and, if any criminality be found, to *present* the wrong-doer, that he may be tried on the specific charge thus found. Upon this finding and presentment, any person so charged will be tried by an ordinary jury, without any intervention of a Grand Jury. The coroner's jury is a court of inquiry *how* the person dead (or wounded) *came by his death (or wounds)*, or *how* the House got broken into or burnt. It has to *find out whether there has been* any wrong-doing or foul play—not to try a *charge* of wrong-doing, and put an accused on his defence. It is this speciality and impartiality that constitute its characteristics and its value. He is an enemy to the Institutions of his country, and to the safety of the citizens, who, either by fettering the action of this Court, or otherwise tampering with its due and ordinary course, would impart to it a different tone, or destroy these its principles and characteristics.*

It is unhappy for the public safety and the fulfilment of true watch and ward, that the right function of the Grand Jury has, of late years, been left undischarged. That function is one of periodical inquiry into whatever breaches or neglects of the Law have happened within the county, *other than* those which the Coroner's jury always inquires of at once. Formerly, a full Charge of the matters to be thus inquired into, was always de-

* In 1854 occurred a case of unconstitutional interference with the Coroner's Court, which, whatever the impulsive *motives* that prompted it, deserves the strongest reprobation, and is of most dangerous precedent. Upon *ex parte* representations made to him, the Secretary of State for the Home Department took upon himself to instruct the Coroner for Middlesex to hold an Inquest on a child (Alfred Richardson). The Home Secretary has no sort of lawful authority or power to interfere in the slightest manner with the Coroner's jurisdiction. It is a gross breach of his duty to attempt to do so; and a setting of the example, by him who ought to be the exemplar of respect for the Law, of a disregard for it. If the Coroner fails to hold inquest upon notice, he is both severely punishable, and can be compelled by *mandamus* to hold it. Nothing can be more reprehensible or alarming than such entirely illegal, and, in fact, purely arbitrary and despotic tamperings with our Institutions, under cover of whatever pretences of humanity. There was a lawful, extremely simple, and regular course to have taken, in order to ensure the holding of this (or any other) inquest. The taking, instead, of an illegal and irregular one, is strong proof that the case was not a

livered to the Grand Jury.* This wholesome practice has been unwisely, if not unlawfully, discontinued; and the Grand Jury is now improperly limited, in practice, to going into instances of actual indictments, and ascertaining whether a case for sending the indictment to trial has been made out. Hence it has happened, that some who have not comprehended the true spirit and the adaptability of our Institutions, have sought to procure the abolition of the grand jury.

It has, moreover, been sought to destroy in England those methods of habitual watch and ward which are alone consistent with free institutions, and to introduce, in their stead, those functionary systems which have reduced the Countries of the Continent to the abject condition in which they now are. Repeated attempts have been made to introduce here the system of a centralized and irresponsible "Police," in place of that responsible constabulary which was always efficient till it was designedly emasculated. The attempt was made several times ineffectually, till it was, to a certain extent, carried out, by means little creditable to all concerned, in the year 1856.† The

fair one. The whole course pursued on that inquest was, indeed, so grossly irregular, and so highly unconstitutional, that such an inference is strengthened. Counsel was allowed to prosecute and to defend! and even to assume to appear as "assessor" for the Crown!! Nothing more monstrous was ever heard of. It was the Coroner's duty to have resisted it, and to have refused to let his Court proceed in the Inquiry until the unlawful attempt was entirely withdrawn. The acting Coroner (Mr. Baker) forgot due firmness.

* I might give many examples of this. I content myself with one, which I select because it gives an illustration of the fact that, even when England was torn with civil war, her Institutions were respected. The selfish *Materialism* of our day has done infinitely more mischief to the moral tone of society, and to the undermining of our free Institutions, than all the civil wars of England were ever able to do.

On the 20th March, 1648-9, Serjeant Thorpe delivered the usual charge to the Grand Jury of the County of York. Confining myself to one point in that charge, I find him taking the following as one head:—

"Next come the offences against public justice; which are also *to be found out* by us; and these are either *against justice in the general*, or are offences *by officers* trusted in particular administrations," etc. The latter are enumerated in detail, the following being the *titles* of the groups of articles enumerated as to each:—

"Touching publick officers trusted in the administration of Justice, and failing in their duty:—First, the Sheriff: touching the Turne: touching the County Court. Touching the Constable. Coroner. Clerk of the Market. Clerk of the Peace. Ordinary. Overseers of the Poor. Overseers of Highways."

† The 16th section of 19 & 20 Vict. c. 69 was neither more nor less than

Act effecting this has been already noticed. Though shorn of some of its worst features for a time, it provides the means for presently accomplishing all the objects of a completely centralized Police, through the device of Inspectors, whose sole work will be to get up cases, according to instructions, in order to effect this purpose.*

This object of reducing the whole country under an organized central Police, is sought to be further accomplished by establishing a system of Crown-appointed "Public Prosecutors." The latter and the centralized Police scheme itself, are parts and parcels of one purpose and one design.† A Committee of the

a *bribe*, to induce the county members to assent to an Act which violates every constitutional principle. But by this section every County and Borough is made wholly dependent upon the pleasure of the *Secretary of State* (instead of, supposing such subsidy to be right at all, upon the state of crime and order in the place), whether the expense of its Police shall be subsidized or not. This brings all entirely under the control of the Home Secretary, and so makes the grasp at a centralized police in fact complete ;—and the doing away with the *form* of local control remains only a matter of time and convenience. That any Body of men should have been bribed by this promise of subsidy is amazing, since it is, at the best, only a plan to pay Peter by robbing Paul.

* The system, quite lately introduced, of bureaucratic "Inspectors," is a device which can never be available for good purposes. But it is a convenient means of increasing patronage, and of getting up *ex parte* cases. There is not one case of the appointment of such "Inspectors," which has not illustrated the gross abuse and mischiefs of the functionary system. I need only refer here to a correspondence between the Mayor of Falmouth and the Board of Trade and Home Office in 1853 and 1856 (published in January, 1856), which well exposes the Inspectorship of Prisons. In the Birmingham case (before, p. 376 note *), the "Inspector" saw nothing and did nothing : it was the Coroner's Inquest which inquired out and exposed the wrong. (And see, as to Poor Law Board 'Inspection,' before, p. 352 note.) In the present case, section 15 is an ingenious device, provided on the regular *red-tape* system,—which has of late years produced such happy effects in every department, civil and military. Three nominees of the Home Secretary are to be appointed "Inspectors." Their sole duty will be, to manufacture secret and *ex parte* Reports, according to pre-arranged instruction and foregone purpose, in order that the same may be paraded as "authority" before Parliament, to help any of the designs and further encroachments of the Ministry of the day.

The means of true inquiry, recognized by Law, and efficient in practice, have been often noticed in these pages. And see after, p. 414 note, from Hale.

† The proof of this, apart from its obviousness, happens to be direct. In March, 1855, Lord Brougham put the following resolutions (among others) on the table of the House of Lords :—

"That the *local police* establishments ought to be under the *direct super-*

House of Commons was, according to an ingenious modern plan, appointed in 1853, to get up a case for the establishment of a centralized Police. It fulfilled its task, without any difficulty, by taking selected *ex parte* evidence, without cross-examination, and carefully excluding any evidence on the opposite side of the question.* The evidence thus got was, in fact, such as would not be admissible or allowed in any Court of Justice, in dealing with the most trifling matter. But it was sufficient for the House of Commons, in dealing with the deepest interests of the Nation. The object of that Committee's appointment having been pressed on, and in part since accomplished, another committee was afterwards appointed, to get up a case for establishing Crown-appointed "Public Prosecutors," to work the centralized Police organization. This Committee, pursuing the same course as its predecessor, sat during the Sessions of 1855, 1856. Carefully avoiding any inquiry into the practical history, causes of present deficient action, and means of remedy, of any of the Institutions of England, with regard to the prosecution of wrong-doers, the aim of the evidence taken was, and the Report put forth is entirely directed, to make out a plausible case for the most gigantic scheme of irresponsible,

intendence and control of the Government; and that the same rules should, as nearly as local circumstances will permit, be everywhere applied.

"That the *prosecution of offenders* should be entrusted to an *officer appointed by the Government*, with such number of subordinate officers as may be required for conducting prosecutions in the counties and larger towns."

These resolutions show how much real regard Lord Brougham has for free institutions, while they deprive him of any claim to Statesmanship. The true character and ultimate results of the "Law Reform" which he has ever on his lips, are well shown in the confusion, contradiction, and present anomalous condition of the so-called County Courts, established for carrying out his favourite system of *summary jurisdiction*; the state of which Courts, though so lately organized, was well shown in some able letters in the *Times* newspaper in January, 1857. There is no case of complication or anomaly in any of our Common Law Institutions of a thousand years' growth, which equals that exhibited in this Statutory growth of less than ten years. See before, pp. 22 *note* †, and 220 *note* †.

* The Committee omitted to inquire into either the history of the subject, or the causes that have led to any want of efficiency in the existing system; and omitted, also, to make any inquiries as to the system adopted, and its results, in those numerous boroughs in England which manage their own constabulary in a manner far superior to either the centralized management of the Metropolis or the Justice-controlled system of the Counties. Such evidence would not have suited the *object* with which the Committee was appointed; which was, to get up a case for a centralized National Police.

coercive, and capricious functionarism that has been yet proposed in England.

This Committee carefully avoided fulfilling any one of the rules laid down, by the greatest of English lawyers, as the only sound guides to be followed in considering any proposed new law. These are:—1. “to have a clear knowledge of the municipal laws of our own nation; for the repeal, altering, or change of some laws is more dangerous than that of others; 2. to understand what are the true sense and sentence of the laws now standing, and how far such former laws have made provision for the case that falleth into question; 3. to learn what have been the causes of the danger or damage that hath fallen out in that particular to the commonweal, either in respect of time, place, persons, or otherwise; 4. to take careful heed that a fit and sound remedy be so applied as that, while seeking to heal some past mischiefs, there be not a raising of others far more dangerous.”*

The thorough provision made by the Common Law of England for the discovery and prosecution, on behalf of the public, of all wrong-doers, has been already pointed out and illustrated. Nothing would be easier than to restore the practice of all these means into full and efficient activity, adapted to whatever any changed circumstances of the times may need. This efficient method would not, however, suit the objects of those whose ceaseless aim is, to enlarge the grasp of a centralized

* Coke, Preface to 4 Reports. How clear, consistent, and well-grounded on principle, are the teachings of Lord Coke, is well illustrated by a comparison of a passage in Heydon’s Case (3 Rep. 7) with the above. The following are the rules then laid down for the *interpretation* of all Statutes:—“Four things are to be discerned and considered:—

“1. What was the Common Law before the making of the Act?

“2. What was the mischief and defect for which the common law did not provide?

“3. What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?

“4. The true reason of the remedy?

“And then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy; and to suppress subtle inventions and evasions for continuance of the mischief; and to add force and life to the cure and remedy.”

Had these rules been observed in the construction of 25 Geo. II. c. 29, the very mischievous effect given to that law, in direct opposition to the intention of its authors and to the “remedy” it was intended to make of a mischief, could never have taken place. See before, pp. 374, 375, *note*.

functionarism, and to kill out all that there is in the life and spirit of our Institutions which tends to resist such innovations. Nothing but an absolute prostration of the whole country to this system will satisfy them. For this, and the wide patronage it gives, they ceaselessly strive. And they will gain their end, unless the people themselves rouse from their apathy, and learn to understand and value the Institutions which their fathers have left them, and which are thus being systematically undermined. The contemplation of the success of the attempts that have been already made, and of those that are still making, is appalling to any one with any spirit of patriotism or any love for free institutions.*

The actual means taken to endeavour to force this nefarious scheme on the country, deserve particular attention in this place. They immediately concern the welfare of every Parish in the land.

The *ex parte* character and insufficient nature of the inquiry by the Committee above named,† are demonstrated by the terms of the Report itself, where it states the points inquired into. That statement *omits the one fundamental point*—namely, how crime is to be *found out*. The finding out of crime, and the bringing home to justice of the person to whose door the perpetration of it is traced, are two distinct processes, though the latter should be always an inseparable *consequence* of the former. The Common Law of England provides carefully for both. No practice can be sound and safe which does not provide for both. But this committee left the former, which is necessarily the more important one, wholly untouched.‡

* See before, pp. 5–8, *note*. Even the *Times*, which supported the National Police scheme in 1856, awakened, before the year closed, to a sense of its error. In an article of 29th December in that year, it says:—"How frightful an instrument of oppression in the hands of a despotic Sovereign would be the police which had been organized for the purpose of keeping this population in order!" This "frightful instrument" the *Times* has done its best to get organized in England. That the attempt has not yet been wholly successful, is owing entirely to the unremitting efforts of private individuals.

† The foregone conclusion of whose appointment is shown in the very terms of the reference to it:—"That the subject of the *Public Prosecutors' Bill* be referred to a Select Committee;" 17 May, 1855. The same thing is shown in the terms of reference to the Police Committee, 26 April, 1853.

‡ One of the witnesses, Mr. Greaves, recommended inquiries in one or two very limited cases. This was all that the Committee allowed to be brought before them on the point; and even this is passed over in silence in the Report.

Lord Brougham told the Committee that "*nothing can be more ineffectual*" than the provisions which the law and the practice under it [in England] now make for the prosecution of offences." This allegation refutes itself. No statesman could deem it worthy even of notice—except at once to reject every argument built upon it. Such an allegation cannot be rescued from the alternative of sheer recklessness or wilful misrepresentation.* Lord Chief Justice Campbell, and others of real experience, contradicted the allegation in the completest manner.† It is, indeed, well known that (whatever our faults) there is no country in the world in which person and property have heretofore been so secure as in England. Were it true that "*nothing can be more ineffectual*" than our system of prosecution, it is self-evident that the state of the case would be exactly the reverse. But again, England has existed, with certain definite provisions and Institutions for the prosecution of offences, for more than fourteen centuries. And it is these provisions and Institutions which have, through all that time,

* See before, p. 386, *note* †. Lord Brougham contradicts himself (which is nothing wonderful) in his evidence before this very Committee. He says, Q. 69, that "the *French* criminal procedure is exceedingly bad. It is *impossible to conceive a much worse* criminal procedure," though they have public prosecutors in France. But it is also worthy of notice that Lord Brougham, who professes to be a pupil of Bentham, in his anxiety to help the establishment of the novel system of a centralized, irresponsible, discretionary prosecuting bureau, contradicts entirely the language and strong advice of Bentham. The following are Bentham's words, which strictly apply here, and which are well worthy to be thoughtfully considered:—"The models, the standards, the exemplifications, of the proposed improved system, nay of a perfect system, are not objects of a Utopian theory. . . . To find these models of perfection, an Englishman has no need to go out of his own country: for invention there is little work, for importation scarce any. English practice needs no improvement but from its own stores: consistency, consistency, is the one thing needful: preserve consistency, and perfection is accomplished. No new powers, no tamperings with the constitution, no revolutions in power, no new authorities, much less any foreign aid, are necessary. . . . It requires not innovation, but restoration and extension. *Restoration* of powers once in existence, before they were swallowed up by the framers of the existing system of abuse, under favour of their own resistless power, working by their own frauds, covered by their own disguises, in pursuit of their own sinister ends." Bentham's '*Rationale of Judicial Evidence*,' vol. v. pp. 740, 741.

† Though all the evidence given before the Committee did not, by any means, agree with the foregone conclusion (the vagueness of views expressed is, indeed, very striking), this little difficulty was readily overgot, by treating all such evidence with entire silence in the Report.

made life and property safer here than in any other country. Let it be admitted (and it is true) that these institutions are not all now in the same working order as heretofore. This only proves that *the fundamental thing* for the Committee to have inquired into was,—what is the History of the system and institutions of England appertaining to this matter; what have been the changes that these have undergone; and how have any existing defects grown up? * These are obviously the points of inquiry that need the attention of the Statesman; and the points without which no Report of any Committee can carry weight with thinking men.

But the subject involves far more extended relations and considerations than are introduced into the superficial mode of treating it, either adopted by this Committee or usually heard in its discussion. It involves all that concerns the *moral tone, elevation of character, truthfulness, independent spirit, and habits of self-reliance*, of the people.

The whole tendency and palpable object of the Report of this Committee are, to put aside all considerations of Statesmanship, Public Policy, or the effects upon the character and habits of the nation; and merely to extend the system of *functionarism*. It is unnecessary now to dwell on what has already brought so many evils on Europe, and is fast bringing them upon England. But it is impossible not to remark upon the singular coincidence of the uniformity with which, within these last few years, Parliamentary “Select Committees” have been made the instruments for getting up *ex parte cases*, by which true inquiry is, in fact, smothered, and the system of functionarism is continually

* The following extract is worthy of attention, in proof of the little information on the Laws of England, as to prosecution for wrong-doing, which those have who now are loudest in denouncing the “inefficiency of the provisions” of the English system.

“Aut certus apparet accusator aut non. Si nullus appareat certus accusator, sed fama solummodo publica accusat . . . deinde autem per multos et varias inquisitiones et interrogationes, coram justiciis [sed per juratos] faciendas inquiretur rei veritas.” Glanville (who wrote in the time of Henry II.) ‘De Legibus Angliæ’: lib. xiv. cap. 1.

This Committee would have done well to have remembered that even William, called *the Conqueror*, thought it necessary,—instead of making a parade of the Laws of foreign nations,—to summon “sapientes, et lege sua eruditos, ut eorum leges et consuetudines audiret.” Such information this Committee carefully avoided. The result would, unquestionably, have been fatal to the object for which it was appointed.

sought, on one specious pretence or another, to be extended.* There never was a case in which the empiricism of the proposed remedy was more transparent than the present. That empiricism would not have been able to have been put forth, had the subject been brought before the Committee in a form of exhaustive research (as it was clearly the bounden duty of those concerned to take care that it should be, before a Parliamentary Committee); which would have enabled the Committee to see that the system and institutions of England, for the Prosecution of offences, are, in themselves, far more complete and safe and effectual than those that exist, or are known to have ever existed, in any other country; and that, while the causes of certain existing defects are easily traceable, what is needed is—*Adaptation*, in the spirit of that system and of those Institutions, and not the mere coarse and vulgar stereotyped extension of the deadening system of functionarism; which is nothing but the slovenly resource of the self-seeking, and never the method of the real Statesman.

It is a practical matter which needs no argument to support it, that those entrusted with the duty of prosecuting on behalf of the public, must be directly responsible to the neighbourhood where they act, if they are to be efficient. Human nature is liable to bias: functionaries love their ease and their salaries, with the least amount of exertion: the very atmosphere of “authority” is inflating to him who breathes it. The constant sense of *immediate responsibility* (which functionaries always shrink from) is absolutely essential, from the nature of the duties, in the case of public prosecutors more than in almost any other case that can be named. Every man in every parish

* The idea of the District Agents, limited in number to the so-called county court districts, is plainly absurd, if the scheme is to be carried out. This proposition merely disguises the ultimate intention. To act at all, they will have to be far more numerous. (See Lord Brougham’s second resolution, quoted above, p. 387 *note*.) It is well worthy of note that, while the only really valuable evidence given before the Committee, was that showing the example of places, such as Leeds and Liverpool in England, and New York in the United States, where the system of officers appointed by the people, or their Local representatives, and responsible to them, is in practice, the Committee wholly ignore these facts, and, without the slightest evidence, or reason, or so much as colour of ground stated, and without even example or precedent to appeal to, recommend that all this host of functionaries shall be the nominees of the Home Secretary! Thus bold and unblushing have the advances of centralization become in England.

must know and feel that, if the person thus entrusted does not fulfil his duty, he will be able, at the next annual election-day, to state his complaint. Otherwise he can have no confidence in a "Public Prosecutor." The office necessarily involves much exercise of *discretion*. It necessarily becomes, practically, a *judicial* one—though one whose judgments are made in secret and *ex parte*. The constitutional system of England has, indeed, heretofore avoided this great error and certain source of dissatisfaction and perversion of justice,* by its inseparable system of unevadible *inquiries*, as a constant and preliminary step, followed by inevitable prosecution if a charge is thus brought home to any one. The prosecution of the wrong-doer is thus to be taken up when the inquiry as to the facts of any wrong-doing ends. The Coroner's Court represents the action of this system now, though on a few matters only. There is no reason why it should not be restored in all matters,† with its inherent accompaniment of prosecution, by public officers, on behalf of the public. As, however, the functions fulfilled by the constitutional "Constable" have, for the present, become put in abeyance, the choice of a special paid officer by every town and parish, to fulfil the duty of directing and conducting every prosecution of a public wrong, will unquestionably tend to prevent the failure of justice in many cases, and so to check wrong-doing. But, to fulfil his duty satisfactorily, every such officer must be directly responsible to the place which appoints him. And the end can never be thoroughly accomplished, till the constitutional system of regular and unevadible inquiries is restored in full efficiency.

The Coroner's Court, as well as the other forms of Inquiry alluded to, are but different practical modes towards ensuring a thorough watch and ward. The empirical temper of modern times has, indeed, set up the notion of hired and vulgar force as the only means to this. It has already been shown that, with the foreign idea and attempt, a foreign name has been borrowed, as the only means of expressing these.‡ The other parts of the system which it is sought to introduce, are disguised under the plea of the advantages of uniformity; a plea which in itself characterizes the mind of the doctrinaire,

* The case of France, admitted by Lord Brougham himself, is an illustration.

† See before, p. 369, note ‡.

‡ Before, p. 120.

and shows a want either of knowledge or of regard for human nature.

"*Uniformity*" is not efficiency. The cry for uniformity is the mere cry of the pedant and the narrow-minded.* The only basis for the safety of society in all matters of watch and ward, is the universality, secured by the various means above shown, of the fact and sense of *Responsibility*.†

Uniformity must not be confounded with *certainly*. The latter is the most important element in the action of all Institutions.‡ Without it, the theoretically best will never be efficient: with it, the worst will be deprived of half their mischief. In nothing can this be more important than in what concerns watch and ward. If wrong-doers feel that they may speculate upon impunity; or if convicted criminals feel that they may speculate upon the lax execution of their sentences; the rights of the public, and the safety of property and person, must inevitably be without any assuredness. It has already been seen in how many instances the rights of the public are now thus left open to attack.§ The repudiation of the great principle of the actual responsibility of every place for every crime and wrong committed within it, coupled with the method of dealing with criminals as if they were creatures to be coddled and petted and sentimentally dandled, instead of as the avowed enemies to society, have effectually destroyed all *certainly* in our modern criminal procedure; and have given an encouragement to crime, and a steady nurture to a criminal *caste* among us, of which the fruits have become too apparent. Person and property are less secure in England now than they were two centuries ago. That Responsibility being taken away which made every man in every place continually feel it his *interest* to do his *duty*, by taking an active share in the watch and ward arrangements of his neighbourhood, the opportunity for crime has become much easier.|| A functionary "Police" system has been let in, while "respectable" men content themselves with an ignoble selfish neglect of their own duties. Totally different motives from those which influence a true con-

* See before, pp. 5-8 *note*.

† See before, Chap. III. Sec. 3; particularly pp. 117-121.

‡ See before, pp. 46, 132, 212, and the end of the note to p. 271.

§ See before, p. 216.

|| See before, p. 366, and the quotation from Squire in *note*.

stabulary, necessarily animate a *Police* force: motives inconsistent with the public welfare.* No system can be a good one which thrives the more, the worse society suffers. The responsible system of the Common Law made the personal interests of every member of society, and the perfection of the system of watch and ward, identical.† The reverse is the case under any functionary Police system.

The taking away, by Statute, of the Responsibility which every place has at Common Law to the sufferer from a wrong done, has been already dwelt on; as has been, also, the empiricism of this most unwise and unstatesmanlike measure, as happily demonstrated by the enforced necessity for already *returning back again*, in several instances, to the principle of the Common Law; it having been thus speedily found how “dangerous a thing it is to shake or alter any of the rules or fundamental points of the Common Law, which in truth are the main pillar and supporters of the fabrick of the Commonwealth.”‡ Truly does the same great statesman remark, that

* The following letter is an authentic illustration of the action of the system:—

“I have been chaplain of York Castle for ten years. If any reliance can be placed upon the statements made to me at various times during my chaplaincy by prisoners, it is true that discharged prisoners are constantly watched by the police, and every impediment thrown in the way of their obtaining employment; and in some instances their companions in crime are *bribed by the police to decoy them* again into the commission of crime, in order that they *(the police) may get a job at the York Assizes*.—THOMAS SUTTON, *Chaplain of York Castle*. (*Times*, 3rd May, 1856).”

Many similar authenticated illustrations occurred in the same year. It is a note-worthy fact that, though the “Public Prosecutor” scheme is part and parcel of the centralized Police scheme, the complicity of the Police in practically defeating the ends of justice and interfering with its due course, are already so notorious as to be strongly—even vehemently—testified to by almost all the witnesses examined before the Public Prosecutors Committee. These are the necessary fruits of such a system. Every man’s experience can supply him with more or less decided instances of the same thing, which have never reached the public ear: while more happen than are known of at all. On the other hand, it is proverbial that a Policeman is never to be met with when needed; the maxim of Falstaff seeming to be instinctive with them, as a Body, that “The better part of Valour is Discretion.”

† “If the robbers escape, the hundred and the liberties within it shall make recompence to the party robbed, within half a year after the robbery is committed.” Kitchin’s ‘Court Leet and Court Baron,’ 1598, p. 17 *b*. See further, p. 366 *note*, and extracts in *note*, p. 373.

‡ Coke, 2 Inst. p. 74; and see *ib.* p. 210; also the preface to the fourth Vol. of Reports.

"it is not almost credible to foresee, when any maxim or fundamental Law of this realm is altered, what dangerous inconveniences do follow."* He well adds, in another place,—of which the above-named instances now afford recent illustrations,—that "albeit sometimes by Acts of Parliament, and sometimes by invention and wit of man, some points of the Common Law have been altered, or turned and diverted from their due course, yet, in the course and revolution of time, the same, as the safest and faithfulest pillar and bulwark of the Commonweal, have ever been, with great applause, for avoiding of many mischiefs, restored again."† The safety of person, property, and rights in England will never be secured, as it ought to be, until, as to watch and ward itself, the Constitutional system of Responsibility is restored in all its completeness,—and so the certainty of inquiry, pursuit, and prosecution becomes inevitably attached to the commission of every crime; and until the criminal knows that the sentence, once pronounced, is one which no maudlin humanitarianism can interfere with, but that the entire execution of it is an inevitable doom for him.

While the inherently defective and unconstitutional system is allowed to remain, every Parish Vestry should feel it to be its duty to have a Committee constantly appointed, to collect information and receive and examine every complaint: and it should, in a systematic and business-like way, by regular meetings of this committee, and communication with neighbouring places and its own county representatives in Parliament, take care that such an eye is felt to be kept upon the functionary Police, that it cannot shirk its duty, nor escape observation, in any case, either of neglect or misdeed. Very much permanent good may be done in this way, and the well-being of the public safety be greatly helped.‡

As regards the immediate instruments of an efficient Constabulary, the real point at the bottom of the whole subject is

* Coke, 4 Inst. 41.

† Preface to Vol. III. of Reports, p. xviii. The Act annihilating this responsibility in England was the 7 & 8 Geo. IV. c. 27. The Acts above alluded to are 2 & 3 Wm. IV. c. 72, 1 & 2 Vict. c. 80, 17 & 18 Vict. c. 104, s. 477. See before, p. 123, *note* §, and p. 132.

‡ See before, p. 35, *note*, as to the true *Ward* system. The primary object of that ward system (as a territorial division) was the maintenance of an efficient "watch and ward" for the public safety.

this :—What is the object of the existence of a legitimate Constabulary, and who are they that are concerned in it ? It must be clear to every one who is not entirely lost to the spirit of self-respect and independence, that the only legitimate object of the existence of any Constabulary is, the assurance to individuals and society of that protection which it is the end of civil society to secure to all, and the taking care that no wrongdoing goes unpunished. It is essentially an arrangement for the purpose of securing the individuals of society against aggression, and against the sense of a danger of aggression, either upon their persons, property, or rights. Such arrangements must exist in every state which pretends to offer the advantages of civilization and progress ; inasmuch as progress depends, more than anything else, upon the assuredness that the result of every effort put forth will be safely enjoyed by him who puts it forth, and that the rights which every man possesses, enabling him to put forth effort, and to maintain his health and strength for so doing, shall be kept safe from all encroachment.

But the idea of a Police force under the control of a Central Government, (whether directly, or through the thin disguise of Crown-appointed “ Public Prosecutors,”) is precisely the reverse, in its essential characteristics, from what any true system of Constabulary must be. As a matter of fact, it is notorious that in no countries are person and property so insecure as in those where the Police is under a centralized control. And in no countries is the personal independence of every citizen so much held in check. In none is the safe future enjoyment of the results of effort less consciously felt. The Police force is made dependent, not on those for whose benefit alone it ought to exist, but upon a certain small and selfish oligarchy which calls itself “ the Government ;” which, forgetting that it only holds a trust, would arrogate to itself the right and power to govern and provide for all ; and which, in doing this, virtually treats all men besides its own small number in the light of men *suspect*—men to be watched. Such a Police is an organized spy system. It renders all society afraid of its own shadow, instead of filling it with confidence. Made dependent on others than those whom it ought to be their sole business to secure against incidental danger, the members of the Police force have, as their chief motives, the ingratiation of themselves with functionaries and authorities by their zeal and activity in

presenting (and therefore trumping up) cases of pretended ill-allegiance to the State, and the getting promotion as the reward of a pretended extra-vigilance in the discharge of their functions;—in reality, by the excess of that arbitrary wantonness which the system encourages and shelters. On the other hand, they have every opportunity to enjoy, with impunity, the fruits of participation in crime, and every inducement to shut the eye, upon occasion, to its perpetration. It is clear that their whole function is thus perverted. That which alone a sound system of Constabulary should exist for, is not accomplished; while an endless complication of mischiefs, and an all-pervading sense of insecurity, are created, by the existence and action of that very body which ought to act only for the prevention of these. And it must be evident to every one that such are the *necessary* consequences of the establishment of any system of *Governmental Police*. This has proved so in every Continental State where it exists. It is absolutely impossible, from the laws of human nature, but that it should be so wherever such a system is introduced.

A sound system of Constabulary must have it as its essential and fundamental principle, that the entire thought and motive of those engaged in the working of the system shall be, the most thorough fulfilment of their duties to the neighbourhood: and, in order to ensure this end, the arrangements and mode of control and management, must be such that all the men of the neighbourhood shall feel themselves called upon to take an active interest in the right exercise of that control and management. There must not be, on either side, any reference to or dependence on another and independent authority, assuming a control over either or both. The Constabulary and the Public must, both of them, know and continually feel that the former exists only for the latter, and not for any purposes of "Government." The only legitimate channels through which any Government can collect information, are those of honest communication and intelligence. The inquisitorial ministry of a prying Police is altogether alien to free institutions: but while this is the inevitable result of any centralized system, it cannot exist under a system where the municipal and local Bodies manage their own Constabulary, in such manner as their special and local experience points out as necessary; with a constantly felt responsibility of the men employed in such duties to these as

the sole authorities over them ; and with a constantly felt relation between the actual managers, for the given time, and the Body of the local public, whose persons and property and public and individual rights are the only objects for the security of which any system of watch and ward ever ought to have an existence.

SECTION III.

PUBLIC HEALTH.

THE Public Health is not a subject which can, with any propriety, be treated as a separate matter for administrative action. Health is a thing that depends upon an infinite variety of physical, moral, and even mental circumstances. Administrative action can deal with but few of these : legislation cannot touch them. By an inaccurate use of terms, however, the phrase "Public Health" has, within a few years past, been got to be exclusively applied, for the purposes of functionarism, to a very limited range of the physical circumstances which stand related to it ; and legislation has attempted to deal with these things as if the whole subject were involved in them.

The sense in which the "Public Health" has thus become a common phrase, is limited to the narrow range of external physical conditions lying within two groups. These arise either, (1) from matters of Common Right appertaining to the Highways, and to that Drainage which has been shown to be necessarily connected with the management of the Highways ; or, (2) from the infringement of that fundamental principle of the Common Law, already named, that no man can so use anything of his own as to let it become an annoyance to his neighbour or neighbourhood.* The Common Law Institutions and practice supply the efficient remedies in each case alike. Any difficulties that have arisen, have arisen solely (1) from the intermeddling and perpetually shifting uncertainty of modern legislation ;† and (2) from the tendency, begotten and cherished by this legislation, to look to functionarism to do or dictate, instead of men bestirring themselves to do their own duty.

This intermeddling and uncertainty were brought to a climax,

* The Vaccination Act, 16 & 17 Vict. c. 100, comes under the head of *Poor Laws*, not of Public Health. Water supply is included within the Public Health Act chiefly in reference to drainage purposes. Burial forms a distinct subject ; the Board of Health having broken down in its attempt to engross it.

† See before, pp. 340, 341, for one illustration of this.

and functionarism achieved a hitherto unattained height in England, by an Act passed in 1848, under circumstances and by means that certainly do not redound to the credit or the statesmanship of any concerned.*

The "Public Health Act, 1848," is not an Act, like those named in the Chapter on "Parish Committees," which is to be adopted, after consideration and discussion, by those concerned. It is neither a *general* Act nor an enabling one. It is a coercive Act; and it has been enforced and carried out by means which will not bear the light of day. The Act is now better understood than it was when the first edition of this work was published. Parliament has not been found so willing as before to carry out the objects of its promoters. It is not, therefore, necessary to enter so fully into its history and details as was then done. It is sufficient to say, that the "Local Boards of Health" appointed under it, are not Institutions of Local Self-

* Every step towards the functionary system tends, like the insidious steps of Russian diplomacy, to prepare its own future further extension. It is the setting up of the slothful, selfish, despotic doctrine of compulsion, instead of the enlightened, patriotic, and only philanthropic, doctrine of moral and social elevation and responsibility. The Board of Health is a mere Body of Functionaries, paid out of the Public Purse, and interested in keeping their places. Hence they have been continually active in getting up cases (at the public expense) from which the superficial may infer how great is the necessity for some "powerful agency" (their own phrase), such as that Board. The law of England justly esteems no evidence worthy of trust which is not openly given, and where there is not opportunity for answer and cross-examination; that so, upon a view of all sides, right conclusions may be formed and judged of. The modern and unconstitutional system of Government by Commissions, of which the Board of Health is one of the worst examples, sets this principle at nought. The supporters and workers of all these commissions dread the free exercise of the faculties and thoughts of men. Their art is, to contrive the means of enforcing dogmas upon men. They put forth carefully-concocted "Reports" and "Minutes;" which the slothful take as "official," and therefore (however really worthless) to be implicitly swallowed. Instead of real inquiry on any one matter, the result of this system necessarily is, to choke and crush all inquiry. By picking *ex parte* evidence,—which may always be got on any side; by allowing no publicity nor cross-examination; and by carefully rejecting all counter evidence; it can easily, while it systematically commits treason against truth and logic, manage to bolster up any pretences, and to "*make out a case*," as the phrase goes, "for Parliamentary interference" in any shape. Once having got the opportunity, it goes on "making out cases," and asking continually for more and more powers. This is the most effectual device that ever was contrived, for benumbing the souls and minds of men by a system of arbitrary and intolerant *State education*. See further, pp. 387, 412-414 *note*.

Government, in any true sense of that term. They supersede the previous Local Authorities, to become but the hampered instruments of the functionary system.* These Boards have thus been the means of mischiefs and permanent evils that, within their sphere, can hardly be exaggerated, and which no legislation can now undo. They have carried out the schemes of the General Board of Health, at great cost to the places which have been so unfortunate as to be afflicted with them.† Those schemes have in no respect realized the promised ends. The cost remains saddled on the places that have been the victims of this experimentalizing. Fresh cost becomes needed, in order to overcome the mischiefs thus done. And even the fresh works will, unless an independent Local Act is obtained, or the Public Health Act, 1848, is repealed, be subject to the same coercion and helpless obedience to the dictation of the Central Board, as have proved the source of the previous mischief.

Where any parish has been unhappy enough to have come already within the meshes of this Act, it can do no more than take every constitutional means to shake off the incubus, by

* See before, pp. 256, *note* †, 343 and *note*.

† The General Board of Health has, under the Public Health Act, 1848, the power of giving or refusing to any Local Board the privilege of borrowing money; thus having a veto on every act of any Local Board, unless the rules and regulations laid down by the General Board are fully carried out. It is expressly declared (Report of the Board to Parliament, 1849, p. 72) that “works should be carried out, upon approved plans, by the Local Surveyor, under the superintendence of the Inspector” appointed by the Board. Again, new works must be “under the superintendence of the Inspector.” And again, the Board of Health adopts as a principle, to sanction the mortgage of rates and the distribution of charges *only on conditions* such as the following:—

“1st. That plans and estimates have been prepared in detail, and submitted for examination to an Inspector [appointed by the Board],—

“And, upon his Report, found to be deserving of approval, etc.

“2ndly. That the works shall be executed upon contracts, upon the following conditions:—

“*a.* That, before they are covered up, or put in operation, they shall be examined by the Inspector.

“*b.* That they shall be further examined by him when in action, and be certified by him.”

And the characteristic tendencies of the same Board are well shown in the same Report, when the Board modestly tells Parliament that it “relies on compulsory powers being given, adequate to the enforcement” of its schemes; and represents to Parliament that the “Board should be entrusted with the power of prosecuting for the neglect of its regulations.”—See further, before, pp. 338, *note* †, 345 and *note*.

helping to obtain a return to a more constitutional and efficient system. It is a matter that deeply concerns the interests of every holder of property in the neighbourhood, and the duty of every good-wisher to the common welfare. Parishes or places not yet brought within the Act, can always resist the coerced application of it to themselves. Prompt and vigorous measures to this end will always be necessary; but they may always be taken with effect. In this, as in every other case, it is apathy which alone is fatal.

In the Chapter on "Parish Committees,"* and in treating, in a previous Section of the present Chapter, of "Roads, Paths, Drainage, and Nuisances,"† it has been shown that the means and the duty exist in every place, to take care that none of those external physical circumstances which interfere with the healthiness of neighbourhoods, and which are all that can be administratively dealt with, shall be let grow up, or remain if they have grown up.‡ The Local Authority exists in every Parish: and every Parishioner should feel that the obligation rests with him, as a moral duty, to see that this Local Authority is made to feel its responsibility, and that it acts up to it. On the mode of its action, and the practical course to be adopted under varying circumstances, I have elsewhere § treated

* Before, pp. 256 and 259.

† *Ib.*, pp. 338–349, 358.

‡ Great need exists for an effectual means of publishing Acts of Parliament. This used to be done in the most thorough manner. (See before, p. 29 *note*.) The best Act may now be on the Statute Book; but, being unknown, it may remain a dead letter. On the other hand, were all Acts published, there would not be so many inconsistent and ill-considered ones. As it now is, it behoves every one to do what he can to make such a useful act as the "Nuisances' Removal Act, 1855," in many respects is, known and put in action. If the duties under it are not fulfilled, a *Mandamus* should be applied for to the Court of Queen's Bench. The cost of this is not so great but that, in any place, two or three may easily join to obtain it. Usually the formal Notice of intention to apply for it will be enough. To obtain a *mandamus* it will be necessary to prove an actual requisition on the Local Authority to do what is needed, and their refusal—either direct or implied by neglect after such actual requisition. See *R. v. Brecknock Canal Co.*, 3 A. & E. 217; *R. v. Bristol Railway Co.*, 4 Q. B. 162; *R. v. Maidenhead Board of Health*, Q. B., 23 Nov. 1855. The Court of Queen's Bench will cordially aid any right application of this nature.

§ 'Practical Proceedings for the Removal of Nuisances and Execution of Drainage works in every Parish, Town, and Place in England and Wales, under the Nuisances' Removal Act, 1855, and by other course of Law: with numerous forms; and complete instructions for the conduct of Parish Committees.' 2nd edition.

at length; and the recommendations there given have since been ratified by the sanction of the Court of Queen's Bench.*

Let the neglects and shackles, the hindrances and doubts, which the omissions of the advisers of the Crown,† together with the growth of empirical legislation,‡ have carefully put in the way of local action, be got rid of; let a knowledge of, and attention to, local duties and responsibilities be kept continually awake, by the restoration of the regular system of constitutional inquiries into the fulfilment of those duties and responsibilities; and the full realization of the *results* on which the external physical conditions necessary for a general wholesome sanatory state of every neighbourhood depend, will follow. Meantime, Health by Act of Parliament is a thing unattainable. Centralization and functionarism,—unconstitutional and mischievous as they are wherever they are allowed to show themselves,—have been proved to be no longer figuratively but literally *fatal* when they are let tamper with the Public Health.§ The improvement of drainage systems can only be ensured, by removing the existing obstructions in the way of the free and unfettered action of all local constitutional Bodies; by making the sense of responsibility to be a real and abiding one with all those Bodies;|| and by engineers, and those who engage their services, maintaining themselves independent of all Procrustean dictation, and letting the results of true inquiry, cautious adaptation, and careful enterprise, be the only authorities acknowledged.

The Common Law of England affords means and machinery much more complete and comprehensive, as well as much more simple and inexpensive, than those provided by any of the Statutes which have, through an artificially created and directed current of public excitement and legislative action, been passed within the last few years, under the name of measures for the promotion of the Public Health;¶ and which have been sought

* R. v. Middlesex, 27 Law Times, 152.

† See before, p. 216.

‡ See pp. 240, 241, 259.

§ See the Report of Dr. Arnott and Mr. Page on Croydon Drainage, already referred to, before, page 349 *note*.

|| See before, p. 46.

¶ It has been proposed to enact new measures touching the adulteration of food. As in other cases, the Parliamentary Committee, and the Agitators on the subject, have only shown their want of knowledge of the existing law; under which every victualler, brewer, and other dealer in any sort of food,

to be enforced by means inconsistent with the maintenance of that spirit of independence and intelligent self-reliance, which every true statesman must seek to maintain and elevate and act through—instead of to coerce. Through the employment of these means, the natural course of improvement in measures of this class, adapted to the growing wants of society and the increase of population, has been retarded, instead of being healthily developed. By the Common Law the responsibility rests on each place, of fulfilling its duties to every man; on every man, of fulfilling his duties to the community: every man is taught that he cannot live in mere isolated selfishness, and for himself alone. The superseding of this by a system which, under the plausible pretence of providing a vicarial instrumentality and a distant superintending control, encourages indifference to the claims of good neighbourhood, and neglect of personal duties, can only have an effect as permanently inefficient and pernicious, physically, as it must always be morally and intellectually blighting. The true aim of the statesman and philanthropist should certainly be, to make all men feel continually and earnestly the responsibilities that attach to them; not to provide them with an excuse for slurring over or unheeding those responsibilities. The Common Law machinery has the former effect inherent in its very action; and should therefore be specially cherished. The bureaucratic systems carved out by statute, have the latter as their immediate and necessary consequence. The one system teaches and requires men to put forth their own efforts; the other invites and lulls them into helpless dependence upon functionaries.*

is already criminally answerable for adulteration. See the Statutes "*Judicium Pilloriæ*" and "*Statutum de Pistoribus*, etc." (51 Hen. III. and 13 Ed. I.) and the late case of *Burnby v. Billett*, 16 M. & W. 644. See also, as to the power of Courts Leet in these matters, the admirable judgment in *Vaughan v. Attwood*, 1 Modern, 202; which is entirely supported by *Wilcock v. Windsor*, 3 B. & Ad. 43, 48; where Lord Tenterden, in the name of the whole Court, said:—"We think the reasons alleged in support of that custom were sound and good. Such customs are, in our opinion, very useful to the public, as affording a protection against fraud and deceit." All Leets have these powers.

* See Chapter III., Section 15, throughout.

SECTION IV.

PUBLIC LIGHTING.

THE Common Law Power to appoint any special work to be done for the general good,—to appoint officers to do it,—and to assess and levy a rate to cover the expense,—have been already fully shown. Among specific things that are for the Common Good of Parishes, Lighting the public places is clearly one. The adoption of any systematic means of Public Lighting is, indeed, a modern idea. No example of a Bye-law ordering it, can, therefore, be expected to be found in old records of Parishes. The principle of those Bye-Laws remains, however, equally applicable; precisely as—to take a converse case—a special nuisance, though unheard of before, comes, at this day, within the range of the old Common Law as to Nuisances.

It has been stated that an Act of Parliament was passed in 1833, declarative, and so suggestive, of the machinery to be adopted in Parishes for purposes of public lighting.* This act enumerates a number of the matters to be done in carrying out these objects. It was useful that some of these should be thus declared by enactment; inasmuch as, in the progress of discovery and improvement, means of lighting are now used which were formerly unknown: and to use which, to the best advantage, requires occasional action in places the right to enter which might have been disputed. Under this Act, the Committee chosen by the Parish (under the name of Inspectors) can set up lamp-posts, irons, and other necessary things, either in the roads or upon or against any walls; and can enter into any contracts, with any Company or persons, to do all or any of the works needed, and to supply light, either by oil, gas, or any other means chosen. But no gas-pipes can be laid through private buildings or land, without the consent of the owner. If the Inspectors use gas, they must take effectual means to prevent any escape of it. Whatever gas-pipes are laid down, are to be at least four feet (unless absolute cir-

* 3 & 4 Wm. IV. c. 90. See before, Chap. III. Sec. 4.

cumstances prevent it) from any water-pipes lying in the same road ; and in other respects, every care must be used that the water has no danger of contamination from the gas. The public has full redress in case of any carelessness in this respect. At the same time, for any damage done to the pipes or other works put up by the Inspectors, or by their Contractors, sufficient remedies against wrong-doers are declared.

This brief enumeration will show that the Act is a useful and available one. It does away, in all ordinary cases, with any need of costly and often vexatious proceedings in Parliament for obtaining Local Acts. Though some details in the Act are open to objection, there is no doubt that a more extended knowledge, and therefore application, of it would be very beneficial. The Principle which it mainly embodies is simply that of the Common Law ; namely, that any Parish can, by a Bye-Law of its own, order and adopt any course which is for the common good of the inhabitants.

SECTION V.

FIRE ENGINES.

ANOTHER thing obviously for the Common Good of every Parish, and so within the range of a Bye-Law of the Parish, is the providing means to protect buildings and property from fire. As in the case of Public lighting, there is not much likelihood of finding special bye-laws hereon in ancient records ; though, more lately, such will be found. The propriety of Parish action in reference to it, is, however, recognized and suggested in Statutes of a century and a half ago. Thus, the Stat. 6 Anne, c. 31, points out the duty of every Parish within the Bills of Mortality, to have and keep in good order two fire-engines, a "large engine and also a hand-engine," with all necessary appliances. An Act of the next year* explains that "every parish," in the former Act, applies to the case of parishes united under the Acts after the Fire of London ; that such united parishes need, together, keep only one of each kind of engine ; but that, in any parish, the Vestry, if they conceive it necessary, may lawfully have more than one of each sort of engine.

All this is declaratory of the Common Law ; but it is usefully suggestive,† without the attempted restrictions of modern Acts. Both Acts mention charges and moneys to be paid by the parish in the matter. Of course these are to be met by a parish rate. The latter of the two Acts makes the raising of such a rate obligatory ; a requirement justified by the importance of suppressing fires in populous neighbourhoods. The amount to be thus raised is in the discretion of the Vestry.

What these Statutes of Anne do for the Parishes within the range of the Bills of Mortality, a Statute already quoted does for every Parish in England that pleases to adopt it.‡ It is suggested, by the latter, that the Inspectors of lighting and watching shall provide and keep up fire-engines, with all need-

* 7 Anne, c. 17.

† See before, p. 134.

‡ 3 & 4 Wm. IV., c. 90, s. 44. See before, Chap. III. Sec. 4.

ful appliances, and a place to keep them in, and appoint proper paid officers into whose charge they shall be given. .

There is no excuse, therefore, either at Common Law or Statute Law, for any Parish in England being without the important service of a Public fire-engine. Care ought to be taken that this is always kept in good order and fit for service. To this end, it should be well exercised at least once a month. The more rural the parish, and therefore the less often the actual service of the fire-engine is called upon, the more necessary is regular attention to its proper keeping and exercise. Without this, it will certainly be found, when suddenly called out, unfit for use. The most trustworthy persons should always have it in charge ; with sufficient salary to ensure it being well taken care of, but under penalty in case of any default, at any time, in either promptness or efficiency.

SECTION VI.

THE POOR.

It has been already shown, that the new system of bureaucratic legislation has taken, out of the hands of the Overseers of the Poor, almost every function which they were originally appointed to perform.* Except in cases of "sudden and urgent necessity," they can give no relief. In those cases, the relief given must be in kind, not in money.† They have no longer, save in rare cases, anything to do even with the binding of "Parish apprentices."‡

It seems somewhat singular that, while the ordering and directing of all relief for the poor, even to the matter of apprenticeships, is taken from the Overseers, and put in the hands of the Guardians, one matter, immediately connected with that relief, still rests exclusively with the Overseers. This matter

* It is unnecessary to do more than call attention here to the places in which it has been already shown in what the original sources of benevolence to the poor consisted; what was the former system of management; and what has been the deliberate perversion of the whole system by modern doctrinaire legislation. See pp. 28-31, 95 and *note*, 308 *note*, 325 *note*; and the whole of Sections 5, 6, 7, and 8 of Chapter III.

† It has been seen that, even the "relieving officers" in every Parish are not appointed by the Parish, but by the "Guardians," and dependent on the Central Board; before, p. 177 *note*.

‡ They remain, however, the persons, or some of the persons, who have to join in apprentice indentures made under bequests of money to Parishes for the purpose of aiding in apprenticing deserving youths. (See before, p. 276 and *note*.) These two kinds of apprentices must not be confounded. The former are apprenticed out of the Parish Rates, and as a part of the system of Poor Law relief to destitution. The latter are merely the recipients of that in which they have an actual independent interest by birth or inhabitancy, without being beholden to any one; and which, having gone through the necessary preliminaries, they receive as matter of right, without any reference whatever to the Poor Law system, or to relief of destitution. By taking out of the hands of the Overseers their duties in regard to the former class, there can be no doubt that the apprentices are deprived of that wholesome and watchful protectorship against oppression, as well as check upon their own misconduct, which it was the duty of Overseers to give, and which no Board of Guardians can supply. As to Apprentices to the sea service, see before, p. 154.

is that of the Removal of those not having a settlement in the Parish to which they have applied for relief. The entire duty and responsibility in respect of this matter still rest with the Overseers. They must obtain the order of removal, and prepare and send the notice of chargeability to the Parish chargeable, together with a statement of the grounds of removal. If the liability be disputed, it is they who must take all the necessary steps to maintain the order of Removal; and they must carry out the fact of removal, when the liability is either undisputed, or, after dispute, established.*

The importance of the subject of what is called "Removal of the Poor," and the attempts which have been made, of late

* The following short analysis of the principal enactments now in force relating to this matter may be found useful:—

13 & 14 Car. II. c. 12, s. 1. Justices may make Order of Removal. s. 2. Persons aggrieved by an Order of Removal may appeal to the quarter sessions. (This applies to both the person removed and the Parish.)

3 W. & M. c. 11, s. 10. Parish Officers must receive a person removed by warrant of two Justices of peace.

8 & 9 Wm. III. c. 30, s. 6. Appeal against order of removal, to be determined at general or quarter-sessions.

9 Geo. I. c. 7, s. 5. Settlement, when to be acquired by purchase of estate.

3 Geo. II. c. 29, s. 9. On removal from one parish to another, Overseers of former to be reimbursed.

35 Geo. III. c. 101, ss. 2, 5. 2. Justices may suspend the removal of sick persons. 5. Rogues, etc., to be considered as chargeable, and may be removed.

49 Geo. III. c. 124, ss. 1, 3, 4. 1. When any order of removal, etc. shall be suspended on account of illness, any other justice of the county or place where such removal or pass shall be made, may order the same to be executed, etc. 3. Order of removal suspended in case of sickness may also extend to other persons named in the order, to prevent the separation of a family. 4. One magistrate may take the examination of an infirm pauper as to his settlement, and report to petty sessions.

54 Geo. III. c. 170, s. 10. Paupers ordered to be removed, may be conveyed by proper persons employed by Churchwardens, etc.

4 & 5 Wm. IV. c. 76, ss. 79, 80, 81, 84. 79. No person to be removed until twenty-one days after notice of his being chargeable has been sent to the Parish to which the order of removal is directed. Such person may be removed if order submitted to, but not in case of appeal. 80. In case of appeal, the Overseers to have access to such poor person touching his settlement. 81. Grounds of appeal to be stated in notice. 84. Costs of relief to be paid by Parish to which poor persons belong. Relief under suspended order not to be recoverable unless notice sent of such order.

9 & 10 Vict. c. 66, ss. 1, 2, 3, 4, 7. 1. No person to be removed from any Parish in which he or she shall have resided for five years; time during which persons are serving in the army or navy, etc., not to be computed. 2. Nor

years, to do away altogether with the Law of Settlement, simply in order to strengthen the hands of the bureaucratic system, make it necessary to show, here, the real state of facts and principles involved; which in truth embrace the whole spirit and purpose of the Institution of the Parish.*

widow, for twelve months. 3. Nor child under sixteen. 4. Nor sick person, except under certain circumstances. 7. Delivery of paupers under orders of removal.

11 & 12 Vict. c. 31, ss. 2, 3, 5, 8, 9. 2. Notice to be accompanied by a statement of grounds of removal, instead of copy of examination. 3. Copy of depositions to be furnished on application. 5. Party making frivolous or vexatious statement of grounds of removal or appeal, liable to pay costs. 8. Abandonment of orders of removal. As to payment of costs on abandonment. 9. No appeal if notice be not given within a certain time after notice of chargeability.

11 & 12 Vict. c. 110, s. 2. Poor persons having a fixed place of abode, meeting with accidents, etc., in some other parish where they have no legal settlement, to be relieved by the parishes of their abode, or previous chargeability.

12 & 13 Vict. c. 45, s. 6. Frivolous appeals shall entail costs.

14 & 15 Vict. c. 105, ss. 10, 12, 13. 10. Notice of appeal may be sent by post. 12. Power to refer, by mutual consent, questions of settlement, or removal, or chargeability, to the Poor Law Board. 13. Delivery of written statement of charges for maintenance of paupers, to be a sufficient demand.

* It will be instructive to notice here, shortly, the means that have been taken to get up a factitious appearance of opinion on this subject. It illustrates, at the same time, the hollowness of the case itself, and the means which bureaucracy employs to set up the False in place of the True, in order to attain its own ends, and to undermine the Institutions of the Land, and pervert the judgment of the Public.

During the Session of 1847, a Committee was appointed by the House of Commons, to inquire into the working of the law of Settlement and Removal. Of this Committee Mr. C. Buller was Chairman. Most of the witnesses examined were attached, in some way or other, to the Poor Law Commission; and, on reading their evidence, it very soon appears manifest that a foregone conclusion had been come to, and that a "case" was to be made out. When the Committee had finished their labours, this "case" was shaped into certain Resolutions.

But so great were the doubts of the Committee as to the soundness of the evidence that had been pressed upon them, that they decided *not to report these Resolutions to the House of Commons*. And the Chairman himself thought the evidence so extremely unsatisfactory, that he appointed, shortly afterwards, a Commission of eight gentlemen to prosecute secret and *ex parte* inquiries on the subject in fourteen counties, chiefly agricultural.

The Reports of these gentlemen were presented to the Poor Law Board in 1848, and afterwards printed and published in 1850 and 1851. Two other gentlemen were also sent on tours of inspection in 1850; and their Reports were made public in the following year.

Mr. Baines, in introducing a Bill on the subject in 1854, stated that these

It must be remarked, in the first place, as to the matter of fact, that the Law of Removal does not act with the inhumanity of sending the destitute away unhelped, or of refusing succour to those suffering from accident. The relief is given immediately: the question is, of the *permanent chargeability*; and

Reports are full of important evidence as to the working of the Law. It is odd that evidence that was alike unsatisfactory to the Committee of 1847 and to Mr. Buller, should become conclusive to Mr. Baines by mere *ex parte* repetition.

Did the Reports of these gentlemen, these paid officials of the Poor Law Board, really contain "important evidence"? Were they actually any more reliable than the evidence given before the Committee, the doubtfulness of which itself led to the pleasant rambles of the gentlemen aforesaid at the public expense?

It cannot fail to strike every one that the most unfit persons of any that could be selected to make such inquiries, were men already themselves part and parcel of the bureaucratic system, and committed to their opinions; and whose bias necessarily was, to pick out such facts as would support the foregone notions and objects afloat in the atmosphere they moved in. The result proves this to have been the course taken.

The Law of Settlement and Removal applies to all England and Wales. Yet these "roving commissioners" were sent into only fourteen out of the fifty-two counties. Nor did they go into the whole of these fourteen counties. Well knowing beforehand, from their experience in such matters, which particular Unions or Parishes would best suit their purpose; which were most likely to tell in favour of the case they had in hand;—to those only were their anxious steps directed.

First in order comes Mr. Gilbert à Beckett. To him were allotted the three counties of Suffolk, Norfolk, and Essex. These contain fifty-six Unions. The Report of Mr. à Beckett refers to twenty-one only.

Captain Robinson visited Sussex and Surrey. Out of forty-five Unions, but fourteen are referred to, while the large metropolitan parishes and Unions are left untouched. The same careful partiality in picking out certain Unions recurs in all the other Reports.

To make the matter, if it needs it, clearer, it must be added that, even of the small minority of *unions* picked out, in this small minority of the *counties*, only a small minority of the *parishes* in those unions were felt safe to be dealt with! Thus "small by degrees, and beautifully less," becomes the worth and reliableness, the fairness and honesty, of this "important evidence." To any one really searching for truth, these facts themselves are proof that the real evidence is felt to be the other way. It is self-evident that, as the present law applies to the whole country, the only way to understand or honestly deal with it, is, to take all parts, manufacturing and rural, and compare them. Yet, on such an *ex parte* glance, at a microscopic minority of a minority of a minority of the districts of England, it is being attempted to enforce Legislation which will affect the whole country, and which embraces a total subversion of the principles always heretofore recognized and respected in our Institutions.

We find, profusely scattered over these "valuable Reports," assertions of

whether bonds of neighbourship shall be maintained, or whether these shall be treated, in our plutocratic days, as but an old wives' tale. The "law of settlement and removal" affects only those who, having ties in another place, are able to be removed; and they are always to be so removed with proper care and attention. The New Poor Law system is itself the greatest source of actual Removal, hardship, and inhumanity. Removal *between contending Parishes* is exceptional only. Certain obligatory conditions might readily be framed which would put an end to this, wherever any hardship can be incurred by it,—the responsibility of the Parish for the cost of maintenance remaining. But poor men and women and helpless children, daily suffer, in every Parish in England, under the New Poor Law system, the horrors of actual removal, in their

the monstrous evils created by the Law of Settlement and Removal, and by the narrowness of the area of chargeability; of the impediments which they cause to the free circulation of labour; of the horrors of the clearance system; of the hardships inflicted on the poor, and the expense thrown on the ratepayers. But when we examine the evidence intended to support these accusations, even *ex parte* as it is, and carefully picked as it has been, the case breaks down.

Some of the Reports (Captain Robinson's and Mr. Revans's for example) reiterate various statements made by discontented persons; but the names of the parishes implicated are altogether omitted, so that their accuracy cannot be tested. And these complaints are often stated in such stereotyped language, that the necessary inference is, that they all proceed from one source,—the suggestion of the Reporter,—and are not the real voluntary opinions of those who are quoted. One is indeed forcibly reminded, through the whole of these Reports, as well as by all parts and exhibitions of that legionary system of "Inspectors" and "Commissions" which has been so hungrily thrust upon the country within the last few years, of the language which Lord Hale uses, when, showing the character of real and fair inquiry, he gives as marking it—"1st. That it is openly; and not in private, before a Commissioner or two, and a couple of clerks; where oftentimes witnesses will deliver that which they will be ashamed to testify publicly. 2ndly. That it is *ore tenus* personally; and not in writing, wherein oftentimes, yea too often, a crafty clerk, Commissioner, or examiner, will make a witness speak what he truly never meant, by his dressing of it up in his own terms, phrases, and expressions." (Hist. of the Common Law: ch. xii.) Compare the language of Lord Coke, 2 Inst. 103.

The facts thus shortly stated, give, in fact, but a glimpse of the mode of manufacturing "cases," which is now reduced to a system in England, by the promoters of the Bureaucratic system. It is thus that all those "Reports" are got up "by authority," which are used to impose upon the public on the questions of Public Prosecutors, Police, Poor Law, Public Health, and every other. They are *manufactured, printed, and published, at the public expense, to mislead the public.*

most aggravated form, by being carried away from home and all associations, to the *Union House*. It matters not to these, whether the Removal is to one hundred miles' distance or only five. It is a far greater hardship to be forcibly herded, at a moment of sudden misfortune, with a multitude of strangers, even a few miles off, than it is to be sent away to a distance, to subsist with a few towards whom there are definite ties, and where there is a responsibility for care and maintenance. Yet such is the Union system. Whoever pretends to declaim against the Law of Settlement and Removal, and can yet support or tolerate the Union system, shows that his professed philanthropy is unreal, and that his pretences are utterly hollow and hypocritical. The cruelty, the hardship, the inhumanity, as well as the demoralization, are in the Union System.*

The whole point is really involved, in this question, of whether the social bonds and mutual responsibilities between the Members of the State shall be maintained; or whether the State shall be set up as a thing apart from its Members,—a bureaucratic machine to be directed solely by functionaries, without allowing any place for the growth or cherishing of human sympathies or local attachments. In short, it is the whole question between Local Self-Government and Christian Sympathy and Charity on the one hand; and Centralization and hard (though narrow-sighted) Selfishness and Communism on the other.

The principle on which sound Parish management, and therefore the public welfare, has been shown to depend, is,—the recognition of the constant co-relation between the obligations and claims of those who make up every neighbourhood; the identification of the interests of all whose lot is cast in a place, with the welfare of that place; the ever-present sense of reciprocal responsibility, and of specific obligations to individuals on the one hand, to the State on the other. Whatever tends to destroy, in any class of men, the *habitual sense* of this, or to lessen the opportunity and obligation of local action and responsibility, or to withdraw the inducements to taking part in local affairs, or to weaken whatever makes attention to such considerations a part of daily life, is a stride towards centralization. It undermines the tone and spirit upon which the action of local institutions depends, and is pernicious to the common welfare. Such is necessarily the case with the proposed abolition of the Law of Settlement and Removal.

* See before, p. 167.

Some high authorities have been professed to be quoted against the Law of Settlement and Removal.* But the bearing of these authorities is liable to be greatly misapprehended. They are three: a Committee of the House of Commons in 1735; Adam Smith; and Mr. Pitt. It is very remarkable that not one of these suggested the change which they have been professedly quoted in support of. The Committee of 1735 recommended, by the last of its ten resolutions;—"that, for the better understanding, and rendering *more effectual*, the Laws relating to the maintenance *and Settlement* of the Poor, it is very expedient that they be reduced into one Act of Parliament;" thus retaining, though simplifying, the Law of Settlement. An excellent recommendation on the whole matter:—not yet carried out, nor yet proposed. Adam Smith wrote when a man, though not actually chargeable on the Parish, could be removed. That was, unquestionably, the great and grievous wrong. Adam Smith dwells on the mischiefs, not of the principle of the Law of Settlement, which is as old as this kingdom,† but of the later Statutes.‡ He was anxious "to *restore* that free circulation of labour *which these different Statutes* have almost entirely taken away." Elsewhere, he compares those Statutes to then existing exclusive Corporation privileges as to apprentices. But, as apprenticeship is certainly not bad in itself, because some Corporations once made it an engine of oppression, so it does not follow, and Adam Smith did not imply, that the principle of Settlement is bad, because certain Statutes have unwisely dealt with it so as to produce hardship. Since Adam Smith wrote, the law which enabled a man, not chargeable on the Parish, to be removed "from the parish where he chuses to reside," has been repealed. So far was Mr. Pitt from proposing to upset the principle in question, that, while he lamented mischiefs then existing, he strongly urged, in the very same paragraph of the speech quoted, that the real remedy lay in "restoring the original purity of the poor-laws, and removing those corruptions by which they had been ob-

* These were quoted by Mr. Baines in introducing his Bill of 1854. But they were not fairly quoted.

† There cannot be a grosser blunder than to talk of the Law of Settlement as originating in the Statute of Charles II. There were actual decisions on it before then, as well as many Statutes. The *Principle* is as old as the establishment of Saxon Institutions, and "frithburghs," and "*view of frankpledge*," and shires and hundreds and parishes, in England.

‡ 'Wealth of Nations' (ed. 1791), vol. i. pp. 212, 216, 219.

secured by subsequent enactments.”* He thus agreed with Adam Smith.

All these authorities in reality tell directly against those who would abolish the Laws of Settlement and Removal. They object to the form which those Laws had, at one time and another, assumed, through legislative interference with their original character and purpose. And so every honest man must object to the form they have now assumed, under bureaucratic inspiration, in order to check the growth of social bonds and sympathies. But the “restoring” a sounder system, is a very different thing from abolishing the Laws of Settlement and Removal altogether, in order to annihilate, at one stroke, the growth of bonds and sympathies already too much stunted by the blight of bureaucracy.

The main grounds for the alterations proposed are, *first*, that, in the words of the Queen’s Speech in 1854, “The Law of Settlement impedes the freedom of labour;” *second*, that hardship is caused to the poor; and *third*, that heavy cost is imposed on parishes. The last point depends on the nature of the remedy proposed.† What have yet been proposed will certainly add to, instead of lessening, such cost. As to the

* Speech on 12th February, 1796.

† Mr. Baines declared that he had no intention, by his Bill of 1854, of interfering with the Law of Settlement. In the Queen’s Speech, however, it was said:—“The *Law of Settlement* impedes the freedom of labour;” and the relaxation of “this restraint” is urged. Mr. Baines himself dwelt, as one of the great existing evils, on the cost of the legal inquiries consequent on the present system. The inference is, that his Bill was to supersede those inquiries and their attendant cost. But, if *removals* only are to be at an end, while the Law of Settlement remains unaltered, it is self-evident that not one penny’s cost of those inquiries will be saved. Nay, it will be much increased. Every inquiry as to the Parish chargeable, and from which the cost of maintenance will have to be recovered, will have to be made as now; and those inquiries will be vastly and growingly complicated by the absence of any of that tendency to adjustment which actual removal brings. Moreover, no method was given in the Bill by which the cost of maintenance shall be simply and cheaply settled and recovered, as between the parish of relief and the parish of chargeability. To all this it must be added, that the universal apprehension—as uttered both by the Public Press and by those most conversant with the subject elsewhere—unquestionably was, that the Law of Settlement, as well as the Law of Removal, was to be utterly swept away by the Bill,—which, oddly enough if it did not relate to “Settlement,” bore the Parliamentary indorsement “Settlement and Removal.” It is clear, therefore, that either the Bill was extremely defective in its provisions, or it did actually embrace the Law of Settlement. Happily, the Bill was lost.

second; any one familiar with the working of the Poor Law must be well aware that, as has been already stated, the highest coloured pictures of the hardships caused by removals between some few contending Parishes, sink into utter insignificance beside the hardships daily caused, in every Union, by the removals from the most distant Parish and part to the Union House, under the Union system. As to the *first* of the above-stated grounds, no one who recalls the works of enterprise done in this country of late years, can gravely maintain that there exists, in fact, the slightest impediment to the free circulation of labour. On the other hand, while there has been an attempt for a good many years, in certain quarters, to get up a Case for abolishing the law of settlement, that attempt has been signally unsuccessful. Mr. Coode, whose lucubrations on the subject were published at the public expense, under the name of a "Report to the Poor Law Board on the Law of Settlement and Removal of the Poor" (1851), begins by admitting that it is impossible to get reliable evidence or information on the subject; and then goes on, by the logic peculiar to functionaries, to *manufacture* a Case out of his own imagination!* On the Case so manufactured, the recommendation urged in the Queen's Speech of 1854 appears to have been entirely founded.

But what makes the matter stranger is, that the very authorities who thus tell us that "the Laws of Settlement impede the freedom of labour," are the same who, three years after the New Poor Law had passed, proclaimed, with loud notes of triumph, that precisely the tightening of the Laws of Settlement which they had introduced, had, itself, opened the door to the freedom of labour! "The capitalist," they then told us, "*is free to employ the labourer*," without the dread that he may bring a burden on his parish"!! Honest men may be pardoned for doubting the infallibility of remedies now proposed, when they are thus directly the opposite of the dogmas propounded from the same quarter, on the same subject, a few years earlier. But such is bureaucracy.†

Admitting, for the sake of the argument, the existence of

* See before, pp. 412-414 *note*.

† So, the Union system was part of the plan for applying rigid tests. Yet the same doctrinaires who made this their grand point, now, in order to compass wider bureaucratic designs, set up an altogether hollow and false cry of humanitarianism

every grievance alleged, it certainly does not follow that the remedy proposed is the right one. Adam Smith and Mr. Pitt both saw what evils had grown up by Statutory meddling. The actual mischiefs now existing, have been created entirely by the increase of that meddling. Every step towards centralization has added to these mischiefs. Every attempt to shut out and nullify the principle of reciprocal responsibility, has added to the hardships suffered, and the costs incurred, and the social injury implanted. This is demonstrable.

The evil of the Laws of Settlement, as now existing, is, that it has been made so hard for any man to "gain a settlement," that, whenever he needs relief, it may become matter of difficult and complicated inquiry where his settlement is; and the settlement, when found, may possibly, for the same cause, be in some place with which he has far less bond of sympathy than he would naturally have elsewhere. He may have passed a life without coming within the tightened technical limitations. But the blame rests clearly with those who have thus narrowed and tightened the law. For the fact is, that the old law,—based upon sound principle, and recognizing the first duty of the State to be, to cherish the sense and habit of mutual responsibility wherever inducements were such as to lead men, of whatever fortunes, to adopt any fresh neighbourhood as their residence,—the old law recognized a sojourning of forty days in a place, whether as householder, servant, apprentice, or in any other *bonâ fide* manner, to be the test of the intention to identify a man's interests with that place; and, *therefore*, as fixing his place of settlement. Under such a "Law of Settlement," there never could be much difficulty or cost in learning the place of settlement; nor the possibility of any hardship from removal. It is unnecessary to trace how this law got gradually tightened. It is enough that incomparably the grossest act of cruelty and wrong in that respect, is what was done by the New Poor Law Act of 1834. That act, among several other narrow and restrictive enactments in the same direction, absolutely abolished the gaining a settlement by hiring and service, or by serving a parish office!* That is to say, the two occasions which enlightened statesmanship and sound policy, no less than good feeling, would clearly point to as what should, more than any, induce to the cherishment

* See 4 & 5 Wm. IV. c. 76, ss. 64-68.

of a sense of neighbourship, of mutual responsibility, and of identification with the welfare of the place, were seized upon by the doctrinaires to warn men off from letting themselves harbour any idea of duties to their neighbours or the State, any sense of mutual responsibility, any attachment for or interest in those whom they serve, or for or in the place whose interests they are, as officers, actually appointed to attend to! Could folly or short-sightedness go further? Such is the cold, hard, materialistic tendency of a vaunted but most false "political economy." It is no wonder that the hardships of the present Law of Settlement,—*The Law of Settlement of the New Poor Law system*,—have been felt, and are complained of. The remedy clearly lies, not in sweeping away the old and wholesome principle, on which every sound institution in this country is founded, but in sweeping away the unstatesmanlike and narrow modes in which that law has been dealt with and tightened.

Restriction is one thing, *stability* is another. Skilled labour, necessary for the successful following of any calling, depends on the latter. A sound social state, while it will impose no *restrictions* on the circulation of labour, will cause *stability* to be found more advantageous than perpetual change. It will make it felt, as a *pervading habit and tone*, that stability of occupation or labour leads to the greatest advantages; that it is thus that the reciprocal obligations and claims of men to each other are best fulfilled. Least of all, therefore, will it actually *tempt* from that habit and tone.

But the proposal for the abolition of the Law of Settlement and Removal does thus *tempt*. It assumes, as its basis, that vagrancy is, and is to be, the habit and disposition of all who "labour;" and that encouraging this vagrancy is essential to the "freedom of labour." It assumes this unintentionally, perhaps, on the part of some; but no less actually. Else, some term of actual effort would unquestionably be made to constitute the ground of claim. The "reciprocity" would not be "all on one side."

This proposal, a Poor Law being retained at all, necessarily offers free alms to any one that asks it. The *claim* on the Public is made entire; the *obligation* to the Public, which ought to be reciprocal, is swept entirely away. Instead of a healthy stimulus to seek the best market for labour, and to the fulfilment of the responsibilities of a good citizen, the invitation is held

out to all, to wander abroad in search of the best free hotel the land affords, with the certainty that there is a free hotel to be found in every part.

Have we a right to expect in the poor, who have the least advantages of education and moral training, an amount of self-denial and virtue that is not given to any other men? The temptations thus held out would be the ruin of any class. All men have, and need, the healthy stimulus of personal or family obligations, to pursue their daily avocations. If Mivart's, or the Albion at Brighton, were always open free to any one, how many of us would resist the temptation?—varying the scene occasionally for change of air. But this is precisely what it is proposed to do for the poor man. The Poor Law is to become a law for free hotels for vagrants. The millennium will indeed have come for professional vagrants. It is only those suddenly reduced to destitution, those who truly deserve sympathy, that will shrink from the temptation. But the spirit that thus shrinks will soon be destroyed. The leaven will soon leaven the whole body. Practical test or inquiry will be impossible. There will be only two means possible of checking the flood of vagrancy. The first is, the adoption of measures of universal and indiscriminating extreme harshness, in the mode of relief afforded. The second is, the establishment of a stringent system of *Repressive Police*. Will the first make the alteration in the law a boon to any of the poor? The second will be a bitter libel on our whole people and institutions, while it will be the most fatal blow at the liberties of England that centralization has yet devised and is panting after. It is, however, being panted after. Mr. Coode dwells on it, in the Report alluded to, in a tone and in terms of exultation, as *the necessary accompaniment of the repeal of the Law of Settlement and Removal*. He is unguarded enough to tell us that the centralizers “only wait the word” to establish such a system.*

* It is very important that it should be thoroughly understood how the attempts of centralization are all intimately connected together; parts and parcel of the same system; sought with the same ends; pressed on by the same means. The Poor Law Centralization Scheme, disguised under the name of “Repeal of Settlement and Removal,” is but part of the *Repressive Police* scheme.

It has been already shown that the proposition for the Repeal of the Law of Settlement and Removal, has been the result of an elaborately manufactured case, got up by functionaries to overlay the truth. Mr. Coode's Re-

Thus is it, as shown in a former section of this Chapter, that the aims and workings of bureaucracy all link together to one end; an end uniformly hostile to free institutions and the public interests.

It can need little argument to show that the results of the proposed naked repeal of the Law of Settlement will be, to deport, of 1851, has been especially alluded to. The following extracts, all from that same Report, are commended to careful attention. When this writer speaks of "Public Opinion," he means, that unhealthy state of servile and unintelligent bowing down before got-up "cases" and official "Reports," the prevalence and increase of which is one of the saddest moral and intellectual results of the progress of Centralization, and every day becoming more marked. See before, p. 401 *note*.

Can anything be plainer than these words?—

"It seems probable that *the law of settlement* is still the cause why the law of vagrancy is not carried into operation; and that, *if the fallacious security of the power of removal were taken away*, public opinion would require that *the Police should be everywhere made efficient*." (P. 50.)

Lest this might startle too much, it is put, presently, a little milder;—but still urging identically the same idea:—

"At all events, it may now be asserted that we have, or can have, *in the police*, a means which did not exist in 1662 for repressing vagabondism; that it only depends on the public that this means should be used, and that the *law of removal* is not necessary for that purpose,—is not even an aid, but is a *prime obstacle to it*." (P. 50.)

Again, says our candid author:—

"Let it be admitted that a stir of the population takes place to any extent [as a consequence of the repeal of Removal], and let the *industrious emigrant* and vagrant be found in motion in any imaginable proportion, we are *perfectly prepared to deal with such an exigency*, and to *suppress the evil* involved in it." (P. 130.)

"If it did so," that is, if this "stir" should take place,—"*or if a salutary general fear of it were begotten*, it would probably have the *best effect*, in giving that *efficiency to the constabulary* to which *nothing is so much wanting* as the public recognition of their duty and ability to *suppress vagrancy*. The *police authorities* know well that vagrancy is the school and the refuge of habitual crime; and *they are understood only to wait the word* to do what incomparably less efficient agency has always done on limited areas, when directed by ability and goodwill—to *clear the country of vagrancy at one sweep*." (P. 132.)

The following is no less plain:—

"It has, at all times, been known that existing vagrancy is the proper object of the action of a *repressive police*." (P. 186.)

Again, hearken to the modern Draco, contemplating his work, and reveling in the idea of a consolidated Poor Law and Police Bureaucracy:—

"Having now achieved a reform of the administration of the Poor Laws, and made them adequate to any demand on them which circumstances may create; *having created and organized a system of Police*, which has practically shown itself, where *allowed to do so*, capable of dealing effectually with every

stroy all neighbourly feeling between those who claim, or may be liable to claim, relief, and the rest of the community. Sympathy will be gone. Bitter feelings must grow. A war of classes will be created. It will be the universal sense, that the thrifty are to be the helpless victims, the milch-cow, of the thriftless ; —made thriftless, not by their own misfortune, but by the temptation of an enforced law. The brand of contamination will be upon *all* who seek relief. Instead of the eye of a man's

form of mere vagrancy, or *only deficient because it is not more universally employed in this function* ; we have at the same time deprived the vagrant of his excuse, and attained the means for his compulsion. *Nothing is wanting but the motive, to the UNIVERSAL USE of these means in both directions.*" (P. 187.)

Hence the connection between the proposed Repeal of the Law of Settlement and Removal, and the new *National Police Bill*, introduced in the same Session ; the Preamble to which latter, it is to be noted, declared it to be necessary "for the more efficient *Suppression of Vagrancy.*" The connection between the centralized Police scheme and that of bureaucratic Public Prosecutors has been shown before, p. 386. Already our Institutions and Liberties have been interfered with, and fundamentally deranged, by the encroachments of Centralization. But the more the system has fastened itself upon the land, only the more eagerly do its promoters strive, and find the opportunity, to press yet further on. The effects of such a Police system as it is sought to fasten on us, have been already treated of (Chap. III., Sec. 3 ; Chap. VII., Sec. 2). Under it, we can only become, as continental peoples are, a police-ridden nation, servilely cowed beneath an ever-present cat-like espionage. An instrument of universal repression is put into the hands of any unscrupulous Minister.

Listen, again, to those who mock humanity by pretending that the repeal of the Law of Removal is demanded by the "*friends of the poor.*" Again we find that the Bureaucrats have only "*waited the word,*" to bring forward their darling scheme of a "*Repressive Police.*"—

"*Unfortunately, it cannot be said, even yet, that the laws for the apprehension and punishment of vagrants are carried faithfully into execution ; but it is only the want of a favourable public opinion which now prevents the law from being carried out. We no longer depend upon the Parish Constable ; but we have, or can have, an EFFICIENT POLICE organized for co-operation, and capable in every way of extirpating vagrancy, IF THE WORD WERE GIVEN.*" (P. 59.)

Of course *who* are to be held as vagrants, is a matter that must be determined by the functionaries into whose hands, under this thin disguise and transparent pretence, the enforcement of the Russo-Austrian police system upon England is sought to be committed.

Other passages to the same effect might be quoted from the same Report. Enough has been quoted, however, to place the connection between Poor Law schemes and Police schemes beyond a doubt. The matter is one which calls for the gravest attention of every man who values the Institutions and the liberties of his country, and the welfare and independence of any class of the community.

neighbours, in his own parish, being upon every man, where the numbers are never great, all will be herded in crowded places, away from neighbours; and, instead of feeling humiliated by their dependent position, and so stimulated to effort, they will be kept in countenance by their numbers, hardened against shame or self-respect, and the few of worst character will deprave the whole.

What, then, it may be fairly asked, is the remedy for the mischiefs which the existing Law of Settlement has unquestionably brought? It is simple, and with no practical difficulty in the application. It merely requires consistency to established principle.

So soon as any man has, by taking a house, or other "occupation," become liable to be rated in any parish, he is reckoned a part of that parish, and can vote at vestries. What is sound policy in one case, is so in another. The sound policy clearly is, that wherever there is sufficient inducement for any man, *bonâ fide*, to seek the fruits of effort in any place, he shall promptly find himself welcomed and recognized as a neighbour there, and feel an identification of his interests with that place. The labourer, whether skilled or seeking to become skilled, shows as much *bona fides* of motive and intention by six weeks' steady occupation in a place, as his wealthier neighbour does by becoming liable to pay six months' rates. Let a "settlement" follow from forty days (the old term), or any other moderate term of occupation in a parish, and any possible "impediment to the free circulation of labour" will be gone, while professional vagrancy will be entirely checked. Any vagrancy whatever will indeed be without the excuse that the tightened laws of settlement have themselves now given it. There will be the opportunity of knowledge and inquiry as to every claimant. Hardship by removal there can be none; while no costly inquiry and investigation can ever be incurred. The man who has not such a settlement, clear and indisputable and near, will stand self-convicted as an unworthy object.

Complaint is made of "close" parishes; a complaint which applies at least as much to the owners of manufactories as of land. But this evil, too, has only arisen from the sound principle of the Law not being carried out. More than two centuries ago, it was very clearly laid down by Lord Coke, that it is "not where a man eats or sleeps or lies, that makes him a

parishioner," but where he puts forth effort. Where he "manures land," where he puts forth his labour,—"*by that* he is resident."* The same rule had been also declared at least three hundred years earlier. It is strange that this just rule has only had a one-sided application. If one man is liable for rates, etc., where he occupies, as a "manurer of land," or as otherwise following any calling, clearly another man's "settlement" ought to depend on where he puts forth his labour. The application of this long-established and sound principle, at once gets rid of all the injustice and hardship of "close" parishes.

These two simple remedies will get rid of all the evils now complained of; while they will have the important incidental moral and social tendency, of giving healthy encouragement to the growth of a sense of mutual responsibility, and of identification of the interests of every man with those of the neighbourhood in which fortune or any inducements have placed him. No one capable of tracing the connection between a principle and its application—or violation—can fail to see that, on the contrary, however benevolent the personal wishes of any may be, the proposal for naked abolition of the law of Settlement and Removal, is impregnated with the whole spirit of Centralization. It has been shown that its necessary tendency will be, to break up all idea and sense of reciprocal responsibility, of mutual obligation and claim. It teaches that selfishness should be the prime rule. At the same time, it makes one great class, the thrifty, to be enforced almsgivers; another, the thriftless, to be thankless receivers. The latter are taught that they may set up, everywhere, an unanswerable *claim*, as matter of *right*, without invoking sympathy, and irrespective of obligations fulfilled. The former are taught that money payments are a commutation for social charities and sympathies and obligations. All are taught not to consider or take interest in their neighbourhoods or neighbours; but to look, ever, to some external controlling power,—which sets up for "paternal."

Such is the progress, and such are the devices, of Centralization in our England.

But the direct centralizing tendencies of this proposal, are no less clear and certain than these indirect but inherent ones.

It gives a widely-increased opportunity—and, as it will soon

* 5 Reports, p. 67.

be declared, necessity—for interference by fresh enforced “Rules” and “Orders,”* to meet the new circumstances which its provisions will create.

All is to be done by “Unions.” Parishes are, practically, to drop out of being. There are about 14,000 parishes in England and Wales; there are only about 600 Unions. The smaller the number, the more easily coerced. Centralization will be a clear gainer, in the proportion of 140 to 6;—pretty well for a single stride.

The proposal is, of necessity, but the direct step to a *National* Poor Rate, though disavowed at present by many. A system of *Union* rating has been proposed. But, by this, whatever inequalities now exist, will only be heightened. The only difference will be, that they will lie between *Unions* instead of *Parishes*; and so be less able to be grappled with from within. The present unequal *assessments* in Parishes (no matter, so long as rating is simply parochial) are left unprovided for; so that the Union equalization will be only apparent, not real. But the ebb and flow of vagrancy which will be caused, pouring into towns at one time, into the country at another, will everywhere lead to inequalities and *variableness* (the truest inequality) such as are now undreamed of.

But, admitting that the Union scheme, as proposed, can endure; the results are no less clear. While the effect of a *National* Rate would be to induce competition in extravagance,—the drop put by each place into the general fund being inappreciable, while each would seek to take the longest pull at that fund,—the effect of this *Union* scheme will be pure recklessness. Each Union (including the few Parishes not in Unions) will be liable to be flooded and swamped by vagrancy, and by claims which it cannot check; which no thrift, care, or economy of its own can lessen or control. Who will strive under such circumstances? It will be labour in vain. No man of self-respect or independence will have to do with such a system. The whole management will, necessarily, fall to functionaries. With the same pretences as Centralization always advances under, it will then be pretended that exclusive central management is essential. Having itself, as in other cases, brought about every evil, Centralization will again, as in other cases, take advantage of what it has created, to press yet further on:

* See before, Chapter III. Sections 5, 7.

thus adding another illustration to the truth of Lord Somers' maxim, that "few men at first see the danger of little changes in fundamentals;" each of which, he so wisely adds, ought, at the outset, "to be most warily observed, and timely opposed."*

Again: there can be no ground for upholding Union Rating, if the principle of the law of Settlement becomes abolished. If the claim for Relief be *National*, as is pretended, there can be no pretext for any *Local* Charge, whether Parish or Union. It clearly follows that the charge must properly fall on the National Exchequer. A "*National*" *poor rate* involves a contradiction. For any one *National* charge, there can be no separate rate or tax, any more than for any other. A separate rate for the army or navy would be as proper and statesmanlike as a separate National Rate for the Poor. Any way, therefore, this scheme resolves itself into Centralization absolute, and the utter extinction of local control, sympathy, or responsibility.

But let it, once more, be assumed, that the plan can be carried out. It still involves the absolute extinction of the Parishes; and thus, practically speaking, all Local interest in the Poor is destroyed. The right influence and opportunity of Local effort have been already far too much, and as unwisely as unconstitutionally, invaded. This proposal will leave no place whatever for local interest or effort.

For the fulfilment of the obligations and functions of Local Self-Government,—for the inducement to take interest and part in the welfare of a man's neighbourhood,—three things are essential:—*first*, the confident and safe reliance, that the fruit of effort made, will be reaped by those who make it; *second*, the regular opportunity of so applying effort, that the matter in question shall be reached and affected by it; *third*, the presence of circumstances that shall continually remind each man of the obligation he owes, and the opportunity he has, to take a part in such affairs. Swamp the parish in the Union (to say nothing of swamping the Union in a wider system) and the first is gone: take away the means of intimate knowledge, the occasions for discussion, the power of applying definite means to definite ends, and the second is gone: take away the fact of local rates, specially growing out of the special circumstances which every man has the opportunity to affect, and the third is gone. Each of these, already so much fettered (like

* Lord Somers on Grand Juries, p. 78 (ed. 1766)

the Law of Settlement itself) by the New Poor Law, is absolutely cut away by this proposal. As the poor are taught by it to despise any obligations they owe to society, so all others are taught not to heed what concerns the treatment of the poor. Every inducement to local activity in this direction is destroyed. Self-reliance and self-respect are made impossible, in consistency with such activity. Centralization is left again to triumph in the fruit of her own wrong.

The Unions are proposed to supersede everything.

Now the existing Union system is full of hardship, injustice, and mischief. To recount all would fill a volume. The enumeration of a few points must suffice.

By the Union system, daily hardships of "Removal" take place,—as it cannot too often be repeated,—by the side of which the accumulated hardships of a year, from removals on the ground of Settlement, sink into insignificance. The claimant, too, removed from the eye of his neighbours, surrounded by a numerous body of others like himself, is removed from the wholesome influence which keeps alive a sense of his position, and constantly appeals to his self-respect and self-reliance to endeavour to escape from it. The Union House itself becomes the gradually attracting centre of a population, formerly spread, who look to it and its officials,—and not to the sympathy and reciprocal sense of responsibility of their neighbours,—as their place of claim and interest. The election of Guardians in the different parishes, has been already shown to be devised on a plan for excluding the possibility of any opportunity, interest, or knowledge, by which the parishioners shall be enabled to make any effort for improvement or sounder policy. The size of the Unions is such that there is usually no sort of community of interest between the different parishes. There can consequently be no action in directions where special local knowledge and intimate sympathy are particularly needed. This has been grievously proved, even on incidental matters,—such as those relating to the Public Health, and the application of Nuisances' Removal Acts: the Union system having been the chief obstruction to the useful application of the Acts on this subject preceding that of 1855, which happily took the matter entirely out of the hands of Boards of Guardians. The Unions themselves have been arbitrarily formed, without reference to any principle, or to the wants, wishes, or even remonstrances of the inhabit-

ants. In many instances, country districts have been grouped with town districts. The rates of one part have often doubled, with no increase of population; and with the necessary result that former kindly feelings of neighbourship have been chilled. There grows a habit of making less effort to provide employment,—for the parish will be no gainer. The schools lose subscribers,—for the poor-rates have risen, while former bonds of sympathy have been snapped. Men are thus being taught to live among each other, not as neighbours having a common bond of interest and responsibility, but as strangers in the same camp.

There is nothing which, more than Poor Relief, makes local interest and working indispensable. Soup and porridge cannot be doled out from Somerset House or Gwydyr House to every destitute man, woman, and child. Shall, then, this relief be administered by mere functionaries, whose sole interest can ever be, in making the best thing for themselves, at the least trouble, out of their places? or should every inducement be held out for every man, in every neighbourhood, to feel that he owes it to himself, to his neighbours, and to the State, to take an active part and interest and effort in the well administering of these and all other local affairs? If the latter, this proposal cannot be admitted. If the former, the institutions and spirit of self-reliance of England have received final notice to quit.

In the reign of William and Mary, when the ill consequences of irresponsible action were felt to be insupportable, the true remedy was applied, of making parish supervision and sanction indispensable to every case of relief to the poor.* This was unfortunately coupled with a clause which, with a benevolent though most mistaken intention, enabled this supervision to be overridden from another quarter. The latter provision led (often from individual benevolent motives) to all the evils of the poor-law administration.† This was not foreseen: certainly it was not intended: but it was not less real. Unless the present age is less enlightened than that, let us adopt the good part of what was then enacted, omitting the bad and irresponsible part. Let the supervision of the parish, instead of being swept away, be again made indispensable; and let it be maintained in responsible activity. But the system which the

* See before, p. 147.

† See before, pp 146-148.

proposed abolition of the Law of Settlement and Removal would extend, is grounded upon the insidious teaching,—as Centralization in every shape is,—that subserviency is an easier policy than self-reliance; that it is less trouble for men to *ask* than to *act*; to *obey* than to *endeavour*; *blindly to follow* than *intelligently to strive*. Evils are stated, as the ground of this extension, some of which do unquestionably exist; but the existence of which is entirely owing to the former dogmatic course of the same bureaucratic authority which now propounds this new device. Every one of those evils will be heightened by this new device; while many others will necessarily follow, which will affect and lower the whole tone of men's minds, and can only lead to the extinction of the whole spirit and practice of our most valuable institutions. On the other hand, there are remedies which may be applied with ease; which will meet and remove every existing evil; which are entirely consistent with the principles and spirit of our institutions; and which will have the further good effect of elevating the whole tone of men's minds, and thus healthily affecting our social and moral condition. Whether any power of compulsory removal should exist, if these remedies were adopted, would be of little consequence. This power could produce none of the hardships that any of the present powers of removal lead to. At the same time, its abolition would not be attended with those inconveniences and mischiefs that will follow, under the proposed naked repeal of the Law of Settlement and Removal. Without entering into questions as to any mode of dealing with the constitution and powers and functions of the Poor Law Board, these three following seem the sound and statesmanlike steps that should be taken, to remedy the evils set forth as the grounds for such a proposal; taking the existence of those evils even at the statements of those who have, for their own purposes, set them forth with all their own *ex parte* colouring:—

First: Any Parish in any Union shall have its right of self-adjustment recognized; and be able, either now or hereafter, to withdraw from the Union, and undertake the relief, care, and maintenance, of its own poor, being held responsible for the due fulfilment thereof.

Second: Such a term (forty days, six months, or other moderate term) shall fix a "Settlement," as shall be sufficient to show the *bona fides* of the intention of him who seeks to

bestow his efforts where the free demand of labour invites him; and as shall, at the same time, exclude free quarters to vagrancy. And *obligation* and *claim* shall be mutual and co-extensive.

Third: The place of Settlement shall be determined by the place where labour is bestowed (and consequently where the fruit of labour is reaped), and not by the place where a man happens to eat or sleep.

The proposals put forth in the Queen's Speech in 1854, and in the argument starting therefrom in the House of Commons, were all grounded on how the Laws of Settlement affect those *capable of work*. Hence, the direct allusion here has been principally the same. But, as all who fall into destitution,—not being at the time capable of work,—either have been themselves capable of work, or are or have been dependent on (and therefore follow the settlement of) those who are or have been capable of work, the principles above suggested are of universal practical application. Under any form of circumstances, that application will be the realization no less of what sound Policy requires, than of what will be for the best welfare of the Poor and of Society.

There is no doubt that some persons think they are doing patriotic service, by seeking to restrict the taking part or share, alike in the management of Parish affairs and in the enjoyment of benefactions, to such as have been even born in the Parish.* There can be no greater mistake as a matter of Policy, and no greater misapprehension as a matter of Institution.

For where a man is born, he cannot be responsible. For where and how he uses his life, he is responsible. The voluntary act should certainly be looked to, rather than the accident of birth. Under ordinary circumstances, the greater part of the population of every parish will be of those born in it. But whoever comes anew into a parish, comes there because he conceives that the residing there holds out to him some advantages. Sound policy clearly opens at once to him the door, and suggests the duty, to link himself, by all interests, with the common welfare of the place. The more he becomes identified with the interests of the whole, the better for all. Good neighbourhood and Christian Charity are thus served, instead

* See before, p. 221.

of an absorbing selfishness being cherished. Whether a man resides in a parish for five years, or for his life, every matter of parish management is just as much felt by him, during the time he is there.

And this has always been the rule of the Common Law. So soon as a man becomes liable to be rated to the burthens of any Parish, so soon does he become a member of the local community for all purposes. And, if he be a poor man, who gives there the fruit of his labour, it is certainly equally for the common interest and his own that inducements to steady occupation be held out to him, in the regular working of our Institutions, and that it be sought to make these the means of cherishing in him bonds of attachment;—instead of letting the feeling grow up that Institutions are nothing; that selfishness is to be the ruling thought of rich and poor; that men exist in the State, not as Members of it, having duties and responsibilities towards it and each other, but as mere subjects of it, isolated in interests and aims, and dependent on caprice or arbitrary accident what length of tether shall be allowed to each.

The longer any men have been known, and the more steadily they have fulfilled their duties, the more will they, under ordinary circumstances, reap confidence. But, for this very reason, sound Institutions will never repel men from the wish and opportunity to fulfil each one's place therein. On the contrary, they will give to every man the invitation and the means to show, that a newly adopted place is not sought in order to enable the evasion of the duties owing by each to society; but that, whatever experience and skill have been gained elsewhere, shall be heartily given to the service of the place of new choice. And the disposition to do this should be met by a prompt and hearty feeling of reciprocal goodwill, and by the full tender of unjealous neighbourship.

In the course of the speech of Mr. Pitt above quoted,* he alluded, incidentally, to the “encouragement of friendly societies” as a valuable means of improving the Poor Laws and the condition of the Poor. It is somewhat remarkable that the most authentic records we possess of the earliest working of the arrangements for the relief of the Poor, immediately after the passing of the Law of Elizabeth, present us with a complete and highly interesting illustration of the action of the Friendly

* 12th February, 1796.

Society principle. So practically valuable does the illustration of this point seem, that I have placed, in the Appendix, a complete copy, in its original style and form, of the Records of one Parish on this matter, for a quarter of a century. I am indebted to the Rev. Richard Crawley, Vicar of Steeple Ashton, Wilts, for the opportunity of doing this.

This highly interesting Record must be understood not to be the whole of the Vestry Minutes for those years. It is, on the contrary, a separate record, kept by itself, in another part of the Minute Book, of what concerned dealings with the funds of the Poor. It illustrates many points of high interest and of great importance. Among these are the following :—That the Statute of William and Mary was merely declaratory of, and designed to make universal and imperative, what had already long been the better practice of Parishes ;—That Parishes were, before that Act, in the habit of meeting for the express purpose of administering the Funds of the Poor,—and that, whatever was done with these, was done by the consent of the Vestry ;—That it was the established system, to help those needing it by loans out of the Parish Stock,*—for each of which Loans the person so helped had to find two approved sureties ;—That, for those Loans, interest was paid while they were held,—the income from which was disposed of for the benefit of the absolutely destitute. Thus a double benefit was done ;—to those who, though not destitute, needed some temporary help ; and, at the same time, to the actually destitute ; while an extra stimulus was given to all to fulfil the duties of neighbourship, and to see that others did the same.

Pitt proved his Statesmanship by the suggestion as to Friendly Societies. No more interesting proof and record of efficient and practical Poor Law Administration, and of the value of Parish management, was ever produced, than that which I have now the opportunity of, for the first time, laying before the Public.† If the system of which this affords

* If there were not enough of the poorer sort needing Loans, some others took larger sums for the time. But this does not affect the practical principle. See before, p. 276, for the application of the Loan system in carrying out, most advantageously, parish charities for aiding the apprenticeship of poor boys and girls.

† Illustrations of the same actual thing are found in other Parish Records. But I am not aware of any, where it appears in so distinct and complete a form.

practical illustration, were restored to general use, the condition of the poor themselves, and the moral tone of the relations between the different classes in Parishes, would become elevated far above what we can hope from anything that our time now exhibits, or yet gives promise of.

SECTION VII.

THE CHURCH FABRIC, GOODS, AND PEWS.

TREATING, as this work does, of the Parish as a *secular* Institution, that which concerns the ecclesiastical relations of the Church does not fall within its scope. Such points as are immediately connected with the rights of the Parishioners, as inhabitants of the Parish, must, however, be glanced at.

It has already been seen that the repair of the fabric of the whole Church belongs, both by ecclesiastical law and admitted common right, to the Minister.* It would seem that the frequent neglect of the fulfilment of this duty, led the parishioners in many places, for their own accommodation, themselves to do some of the repairs. It is, indeed, often said that the repair of the fabric of the Church is a *common law* obligation on the Parishioners. But, where this language is used, the history of the subject cannot have been traced.† It is certain that it is not a Common Law obligation, in the sense in which those words are either generally or properly used. It is not an immemorial custom, nor one founded on the necessity of the thing for the common good. On the contrary, other means have been shown to have been specially provided for defraying this charge; and the common modern practice has only arisen, through the neglect of those to whom by Law the obligation does belong, to fulfil their obligations. It is a custom which has arisen out of mere grace, not out of duty. The cus-

* See before, pp. 307-309, and *notes*; also Blackstone Com. vol. i., p. 384.

† What is stated by C. G. Prideaux ('Churchwardens,' p. 52, ed. 1853), as to parishioners repairing the church, in *consideration* of the use of the edifice,—the parson having the freehold thereof,—is a mere flight of imagination, and the reverse of what is true on every ground of principle, fact, or authority. It would be difficult to point out what the parson has the nominal freehold in the church for, except for the benefit of the Parish. Revenues are provided for his sustenance there, solely in order that he may fulfil the duties of his ministry. "*The Church is common to every man.*" Year Books, 8 Hen. VII. fo. 12. See before, pp. 28-31, and after, p. 438 *note* ‡.

tom may now be a reasonable one; but, to be truly sustained, it must be put on its right grounds.*

It is a further illustration of this subject, that it is not pretended that the parishioners should repair the chancel. The repair of that part is still (except by rare custom) done by the Rector, whether lay or ecclesiastical;—unless, where there is a Vicar, special composition has been made, under which the latter does it.

The *custom* now is, that the parish keeps the nave of the church in repair. But it is unquestionable that this custom depends solely on the assent of the inhabitants, expressed in a bye-law of the Parish Vestry. Such a bye-law has been already shown to have exactly the same sanction and authority as a bye-law for any other purpose deemed to be for the common good; and even to be merely sustainable by its analogy to such a case. It never stood on any other ground. If the Vestry choose to do more than keep the Nave in sound condition,—as, to add galleries or organ,† or otherwise,—it is at their pleasure to do so; and any rate made for the purpose, by their Bye-Law, is binding.‡

“As to the degrees of order and decency, there is no rule, but as the Parishioners agree among themselves; and though they are compellable to put things in decent order, yet there is no rule for the degrees of decency but the judgment of the majority.”§

The purpose of the existence and endowment of Parish Churches is, that there shall everywhere be the free means for every man to have the benefit of all the offices of religion. The church is not a building for the service of any *sect*.|| It embodies the broad fact that there shall be always, and *free to*

* See further hereon, Chap. VIII. Sec. 5; also, as to the custom, p. 446.

† It could hardly seem necessary to add, that the choice of organist belongs entirely to the Parishioners. But the attempts that have been sometimes made at encroachment by the Minister, even on such a point as this, make it right to state it thus specifically. Such choice is a matter *entirely in the discretion* of the Vestry. *Ex parte* Le Cren, 2 Dowl. & L. 571.

‡ See before, Chap. II., pp. 47–51, etc., as to Bye-Laws generally. And see Bromsgrove Case, 2 Roll. Ab. 291 (pl. 4); Woodward *v.* Makepeace, 1 Salkeld, 164; Anonymous Case in Popham, 197; and after, pp. 438, 439.

§ Newsom *v.* Bawldry, 7 Modern, 70. See after, pp. 438–440.

|| This is strikingly illustrated by the cases as to the validity of lay baptism. See Escott *v.* Martin, 4 Moore's Privy Council Cases, 104.

all, the means and opportunity of the reminder, that man is not made for himself alone, nor to live here for ever.

Thus the question does not really arise, whether “dissenters” shall, or shall not, pay for the church of another Body. The Parish Churches of England have not always heard one set of doctrines. The Law and the Right were the same, however, as regards the Parishioners, when the Roman Catholic religion, and when the doctrines of the Presbyterians and the Independents, were taught in them, as since. It is a part of our Institutions that, free and unpaid for, there shall, in every Parish, be the ministry and offices of religion open to all. What the form of these shall be, can but depend on what is the form that is most agreeable to the majority. If the views of any Body now among Dissenters, were, tomorrow, to become the views held by the majority, it would be no less sure that these would be represented in the places where all men have the Institutional right freely to go up, than was the similar course taken after the Reformation. The Law and the Common Right would remain the same; and equally important and equally unsectarian, in principle, as now. It is unquestionably the fact, and an unfortunate one, that too many members of the existing Church establishment itself, regard its position as a matter of doctrines, instead of as standing on the broad grounds above stated; which are the only real and impregnable ones. It is this circumstance that has done, and is doing, more than anything else to injure the love and reverence for the Church itself, and to weaken attachment to the Institution, by causing its true character to be misunderstood. Ill-judged attempts have been made, and are making, in our day,—as has been seen in former chapters*—which countenance the too common notion of the Church Establishment being that of a domineering sect, instead of the free church of a free people. Such attempts, if continued, will, in the end, inevitably ruin the Institution, and deprive the nation and the Poor of the free church and the free offices of religion.

In addition to what has been thus said, it must be remembered that the church itself is the place where, according to ancient custom, the meetings of the Parishioners for secular purposes are held. And, though a singular perversion of sentiment—more truly, the superseding of religion by cant—has,

* See also, the whole of the following section.

within a very few years past, professed to find some impropriety, and even "scandal,"* in this course, it must be clear to every one who bears in mind the spirit of the "*two commandments*," that no place can be more fitting for men to meet in, to do what is needed for the fulfilment of their duty to their neighbour, than that in which they also meet to learn those duties which the former are "like unto."†

Immediately connected with and illustrative of the point as to the *church of the people* (the true name and character of the English Church Establishment), is the fact that, though the freehold of the church is said to be in the parson (which is, indeed, a mere technicality‡), all the seats, goods and chattels, things and utensils, whatsoever, within the church, and used either in its services or otherwise, belong to the Parishioners, and to them only.§ This unquestionable point as to property, goes so far that even the surplice and robes, worn by the Minister only, are not his property, but belong to the Parish.|| From some ancient inventories, hereafter quoted, it will be seen how much care has always been taken on this point. It has already been shown that the Churchwardens alone, with the consent of the Parishioners, and not without, can deal with any of this property. And it is a matter of no less practical importance, that one churchwarden cannot act without the consent of the other or others. It is the whole Body of the Churchwardens

* See before, pp. 54, 96 and *note* ; 'Local Self-Government,' p. 238 *note*, and 330 *note*. Happily, a later act than the one quoted at these references, recognizes the old and sound principle and practice. See 18 & 19 Vict. c. 127, s. 10.

† See *Burton v. Henson*, 10 M. & W. 105 ; and *Worth v. Terrington*, 13 M. & W. 781 ; as to the power of the Churchwardens to remove wrongful intruders in the Church, both during service time and on other occasions.

‡ See Lord Coke, as quoted before, p. 268. And so Ayliffe says :—"Though by the Common Law, the Church and Church-yard are (it seems) the soil and freehold of the parson, yet the *Use* of the Body of the Church is common to all the Parishioners. And though the seats are fixed to the freehold, yet the Church itself is dedicated to God's service, and the Seats are built there that the people may, with more convenience, attend divine service." *Parergon*, p. 484.

§ See before, p. 321, and *note* ‡ thereto ; and see a remarkable case in *Degge*, p. 218, *note* 61*, ed. 1820.

|| This may moderate the indignation and wit of some, at the charge for "washing surplices ;"—the latter being the property of the parish, and the need of washing following from use in a service which is free to all, and takes place for the common good of all. See after, pp. 492-496 and *note*.

which is the Corporation able to act on behalf of the Parish.* The Minister is even bound by very stringent regulations as to the use of any Library left, as has been done in many Parishes, as a Parish Library for his use.† He can neither introduce any ornaments or otherwise into the church without the consent of the Parish, nor can he remove anything that is within the church without the same consent.‡ If these simple principles were remembered and acted on, many of the scandals that have lately disgraced the Church, and led to the asking for arbitrary episcopal interference, would have been avoided; and the matters in dispute would have been settled calmly and constitutionally, without either high language or bitter feelings.

The Church Bells belong, like the rest of the goods of the church, to the Parishioners. There has, from of old, been a great pride in having a good peal of Bells in the Parish Church. The Churchwardens ought to take care that they are rung at proper times, and in a proper manner. In this, as other things, the Canons attempt to give the Minister a concurrent authority with the Churchwardens. But there is no warrant for the attempt. The Church Bells belong to, and exist for the exclusive use of, the Parishioners. It is for them and their officers alone to determine when they shall be rung. To attempt to check the cheerful ringing of the Church Bells is equally improper and illegal. The sound of them is dear to the earliest recollections of almost every one; and their music is mixed with the most cherished and happy sympathies of every man of true and simple taste.

The Church Bells ought to be rung before every Vestry. This is the *mote-bell* named in the ancient Saxon Laws;§—the summons calling men, far and near, to come up to the place of

* See before, p. 101; Roll. Ab. 393; *Starkey v. Barton*, Cro. Jac. 1 234.

† 7 Anne, c. 14.

‡ See the case of an action for taking the Church Bells, before, p. 297; the *note* ‡, p. 321; Moore, 878; Cro. Jac. 367; to which any number of cases could be added. See also the judgments of Dr. Lushington in *Westerton v. Liddell* (Consistory Court, 5th Dec. 1855), and of Sir J. Dodson in *Liddell v. Westerton* (Archbishop's Court, 20th Dec. 1856). But more light is thrown upon this important subject, by the evidence produced at the trial of Archbishop Laud, than by all the authorities referred to in those judgments. It is indeed very remarkable that this evidence is not even noticed by either of these learned judges. See *Laud's Trial* (Canterburie's Doome), pp. 58–114.

§ See before, p. 57.

moot, or discussion, on their common concerns. In most country parishes, the Bells are rung at a fixed early hour each morning: in very many they are also rung at seven or eight o'clock in the evening, under the name of *curfew*. In some places, after having been thus rung for a quarter of an hour, the day of the month is also tolled:—the fact being, that the church bells have always been used to ring out the intelligence of times and hours,—more or less frequently according to circumstances. In many places, *Chimes* have replaced the hand-ringing of particular divisions of the day. The Bells should, moreover, be rung on every occasion of public rejoicing or ceremony. They are also usually rung before every service of the Church.

It has already been remarked that, though the freehold of the church is, nominally, in the parson, the Parishioners have the use of it, as matter of *right*. The use is in them, though the technical freehold is in the Parson. The pews belong exclusively to them. The ordering of the pews is the duty of the Churchwardens, with the consent of the Vestry. They are bound so to order them as to afford the greatest amount of accommodation to the Parishioners. The free use of the Church is a Common Right of every Parishioner. Every man in the Parish has a right to a seat without any payment. The minister cannot interfere in the matter.*

* “The incumbent has no authority in the seating and arranging the parishioners, beyond that of an individual member of the Vestry. It is not the vicar, but the Vestry, which appropriates seats.” *Tattershall v. Knight*, 1 Phillimore’s Reports, pp. 233, 234.

It is well known that pews are a modern innovation, and one of the growths of puritanism. The result has certainly been different from what the Puritans intended; for pews have been one of the main causes of setting up distinctions, offensive to all good taste and Christian simplicity, even in the House of God. In a remarkable old case (Year Books, 8 Hen. VII. fo. 12), though the seats then found in churches were, as is now the case in Continental churches, but a few loose and moveable ones, it is declared that even such a seat is “*a nuisance*” (see before, p. 359), as interfering with the right of “*ease and standing*” that belongs to the people: “for the church,” it says, “is in common to every one; and there is no reason why one should have a seat, and that two should stand: for no place in the church belongs more to one than to another;” while the parishioners “are not able to have their standing room on account of these seats.” How much more, then, is this true with the modern pew system.

The historical facts as to pews, afford proof that no ecclesiastical authority has control over them; though there have been such frequent attempts and assertions in that direction. Lord Coke well says that “the ecclesiastical judges derive their jurisdiction by Parliament, and the custom of the realm”

The right to the use of a particular seat may be attached, by prescription, to a particular *House* in the parish. It never can attach to *persons* and their heirs. The being a parishioner, is an essential condition to the right to use any seat in the church. So soon as a man leaves the parish, he loses all right to use, or even to return to, his seat. And he can give no power, either by sale, rent, or license, to any one else to use it. Nor, so long as one parishioner is unaccommodated, who desires a seat, must the churchwardens allow any foreigner to the Parish to sit in the church.

In case of re-seating the church, it is usual, but certainly not necessary, to get a "Faculty" from the Ordinary. If this is done, it should, however, only be so on the vote of the Vestry. The granting of such faculty is admitted to depend, practically speaking, on the expressed wishes of the Vestry.* The Ordinary cannot, by any faculty or interference, deprive the parishioners of their right to use the seats, or grant any right to a non-parishioner, or any exclusive right to even a parishioner.

It is of great importance to remember that the sale or letting of pews in a Parish Church, whether by Churchwardens or by any holder of a seat by prescription, is altogether illegal. Nothing can legalize this ;—unless, indeed, it be an Act of Parliament: and any such Act of Parliament would be an absolutely revolutionary measure.† Neither can a parishioner, to whom a seat has been assigned by the churchwardens, let it. The latter are bound, indeed, to take care that no such practice grows up. It is one of the marks of the disregard of principle which, in so many respects, characterizes the modern Church-Building (2 Inst. 488). They must in every case show its origin in one of these. The Statute of *Circumspecte agatis* does not include pews—for pews did not then exist. And there can be no "custom of the realm" on the matter, as pews have only come into use long within the time of what is called "legal memory." See 2 Blackstone's Com. 31.

* In the latest case on this subject, (*Bullen v. Parker and Parishioners of Great Baddow*, Consistory Court of Rochester, Nov. 4, 1856,) this is, in effect, admitted by the counsel for all the three parties concerned.

† In vindication of the Constitution of England against such Revolutionary measures, I may, however, again quote Lord Coke ; who tells us that, "in many cases, the Common Law will control Acts of Parliament, and sometimes adjudge them to be utterly void : for, when an Act of Parliament is *against Common Right* and reason, the Common Law will control it, and adjudge such act to be void." (Reports, vol. viii. p. 118.) The same thing was declared by the Court, in a case in 1 Modern Reports, p. 212. See observations in the next Section, on the Common Right to every office of the Church.

Acts, that they admit of the letting of seats in the churches built under them. Thereby they do but further prove, that the "ecclesiastical districts" and "new parishes" which they establish, are merely sectarian arrangements.* Propositions have been made for legalizing the letting of seats in Parish churches. The moment this shall be done, the Church will lose every character of an Institution standing in any relation to the Parish as the *Church of the People*, and claiming, in that character, reverence, affection, and support from sincere men of all creeds and opinions. It will then cease to have any claim whatever, as a national establishment, on the reverence, affection, or support of any man.

* See before, pp. 38-43, 66 *note*. And see the *note* on pp. 40, 41, for the provisions and effect of the "New Parishes Act, 1856" (19 & 20 Vict. c. 104) on the Common Right to the Offices of the Church, and the question of Pew rents. On the other hand, the Act of 18 & 19 Vict. c. 127, provides for the *union* of contiguous Benefices. (See also 17 Car. II. c. 3, and 4 W. & M. c. 12.) Happily, the *foundation of action* under the latter Act (see s. 2.), and so the principle which it recognizes, is exactly the opposite to that already shown to mark the 19 & 20 Vict. c. 104—which was passed only one year later. Thus inconsistent is modern legislation. But how mischievous and discreditable is such inconsistency, and the empiricism and want of knowledge which it demonstrates!

SECTION VIII.

BURIAL.

AND THE COMMON RIGHT OF EVERY PARISHIONER IN ALL THE
OFFICES OF THE CHURCH.

THOUGH burial has been drawn within the range of ecclesiastical matters, yet, being a rite necessarily incident to humanity, it is proper shortly to notice the Common Right which exists in reference to it, and the provision which the Law has made for carrying it into effect.

“By the custom of England, every person (except such as are afterwards excepted) may at this day be buried in the churchyard of the parish where he dies, *without paying anything for breaking the soil.*”*

Burial in his Parish Churchyard, without payment of any fee, is the Common Right of every Parishioner. Though the freehold of the churchyard is said to be in the parson, it is only, as in the case of the church, nominal; the parishioners have the absolute and exclusive right to the free use of it, for burial.

It is an unfortunate circumstance, that the office of Burial should have been ever attempted to be seized upon by the clergy, as a means of emolument. There can be no doubt that the receiving any fee for burial is absolutely illegal, both by the Ecclesiastical and Common Law. It involves, indeed, the heavy sin of *Simony*. The attempts at extortion in this respect, roused, long ago, the indignation and argumentative illustration of some of our ablest lawyers. A small work published by the learned and able Sir Henry Spelman (the defender of tythes) in 1641, under the title of “*De Sepulturâ*,” treats the subject, though at no great length, quite exhaustively.† He conclusively proves that the entire current

* Degge’s ‘Parson’s Counsellor,’ p. 175. The *exceptions* are stated to be, “such persons as murder themselves, die excommunicated, die in any mortal sin, and sacrilegious persons.”—*Ib.* p. 177.

† William Prynne also, a writer not sufficiently appreciated in our day,

of Ecclesiastical and Canon Law is against such an extortion; while the Common Law refuses to recognize an alleged "*custom*" that must obviously have had a bad and illegal commencement.* It is, indeed, not a little remarkable that, after the Corporation of London had, in our own day, at great expense, provided a large and convenient Burial Ground for the London Parishes, the full use of this was hindered and delayed, to the great detriment of the public, through squabbles raised as to "compensation" for fees claimed for Burial by the London Clergy; fees to which they clearly never have had any lawful claim or right whatever; and in regard to which it happens that, in the work just named, Sir Henry Spelman says:—"It hath fallen upon mee to bee an unworthy member of that most noble and most gracious Commission of *exacted fees and innovated offices*; and thereby to have notice, by certificate of divers parsons, vicars, and chiefe Parishioners of most of the greatest Parishes of London: yet none of them hitherto (to my remembrance) have made any such claime, nor know I how they should prove it if they did."†

published, in 1643, 'The Funerall of Buriall-Extortions.' He, like Spelman, was a staunch defender of Tythes. Neither can therefore be suspected of hostility. Their argument and evidence are thus unimpeachable.

* See before, pp. 48 *note*, 440 *note*.

† 'De Sepulturâ,' p. 20. Obstructions have also been put, in various parts of the country, under the most idle and unworthy prettexts, in the way of the accustomed use of new Burial Grounds; for the office of dedicating which, under the name of "consecration," heavy fees are exacted. But, however much importance any one, unfamiliar with the history of the Church and of the rite of burial, may be disposed to attach to the office of "consecration,"¹ it is certain that the attempt to exact any such fees is in itself clearly unlawful, by the Law of the Church itself. To quote only one of the many Canons and Constitutions of the Church on this subject,—*which now*

¹ It is certain that very many even of the Parish Churches in England have never been consecrated. The consecration of the churchyard is a yet more artificial idea, originating in the doctrine of Purgatory and praying for the souls of the dead. "*Ecclesiarum consecratio in quibusdam partibus Angliæ fuerit neglecta . . . et aliquas CATHEDRALES, quæ licet fuerint ab antiquo constructæ, nondum tamen sunt sanctificationis oleo consecratæ*" ('Constitutio Othonis,' A.D. 1236); and see before, pp. 26, and 42 *note**. Even the new Law of Otho, thus prefaced, did not extend to *Churchyards*. And the Law of Otho itself did not lead to the consecration of many Churches. See 'Const. Othobonis,' A.D. 1268, p. 83. See more fully hereon, after, p. 450 *note*, and Appendix A.

The Minister is bound to bury any person dying in the parish, on being duly forewarned. If he fail in this duty, he is subject to suspension for three months. He is also compellable to fulfil this duty by *mandamus*; and is liable to a criminal information for neglect. His prompt readiness in its fulfilment is a matter of much importance. It is of great moment to the poor that the burial of their friends should take place at such times as draw the least upon what is to them the source of their daily bread—the hours of working time. There are some Ministers who have attempted to put an end to, or hinder, burials on Sundays within their parishes; and others, who heed little the serious inconvenience caused by their wanting to fix certain hours for burials of the poor on other days. Nothing can be more reprehensible in point of good feeling and morality than either of these attempts. Besides this, however, nothing can be more illegal. Both the Canon Law and the Common Law are, happily, express in support of the rights of Parishioners to the fulfilment of this sad office.

In some parishes there is alleged to exist a special custom as to payment of a fee upon burial. But both the ecclesiastical and Common Law are plainly against any such custom. On this subject it is impossible to do better than quote the words of Sir Henry Spelman himself:—

“I suppose by this time the offenders in this kinde have left the plaine field of the Cannons, and taken themselves to their last hope and castle of refuge, *custome* and *prescription*; where

form part of the Law of the Church,—it is formally ordained in a well-known one, quoted by Spelman, as above, that “neither for ordination, nor for chrism, nor for baptism, nor for extreme unction, nor for sepulture, nor for the communion, *nor for dedication*, anything be exacted; but that the gifts of Christ be given with free dispensation; *and let him that doth the contrary be accursed.*” ‘De Sepulturâ,’ p. 17.—Sir H. Spelman does not give his authority; but the original Constitution will be found in the *Constitutiones Provinciales* at the end of Lyndwood (p. 10). The original is as follows:—“*Dictum est, solere in quibusdam locis, pro receptione chrismatis, nummos dari, et pro baptismo ac communione. Hæc SIMONIACA hæresis ab ecclesiâ detestata est, et facta Synodus, quæ tales anathematizavit. Statuimus ergo, ut de cætero, nec pro Ordinatione, nec pro Chrismate, nec Baptismo, nec pro Extremâ unctione, nec Sepulturâ, nec pro Communione, nec pro Dedicatione, quicquam exigatur: sed gratis donâ Christi gratuita dispensatione donentur. Si quis contrafacere presumpserit, Anathemate sit innodatus.*” Compare Lyndwood, p. 278. See after, pp. 446 note †, 450 note †, 451–456 and notes.

it now resteth to beat them out. Every man knoweth that evill customes are in their owne nature to bee abolished; and those that be good, yet if there bee a positive law against them, they are also voyd.* The nature of this custome, by the collection wee have made out of the Cannons, is not onely declared to bee excessively bad; but, by the generall Councell of *Lateran*, to bee very horrible, and consequently to bee abolished: but, being positively against the Canon, it is *in ipso hoc* directly void, though there were no clause or provision in them so to denounce them. Yet *ad majorem cautelam*, the fourth and fifth Cannons doe expressly overthrow that custome, and besides doe brand it with this note of infamy,—*the elder the worse, and the longer it hath continued the more grievous.*"†

It may be added, as to this and as to other pretended customs treated of in this Book, that the very time of their traceable origin destroys the possibility of setting them up as "legal customs." They can all be proved to have been begun since the Reformation; while a custom, to be lawful, must go beyond "legal memory," that is, the reign of Richard I. It is admitted by Sir William Scott himself, that the attempt to exact fees for burial is, as has been shown to be the case with so many other ecclesiastical encroachments, a thing that has grown up since the Reformation.‡

The use of the Churchyard for Burial being the common

* This is expressly re-declared and, almost in these very terms, confirmed by the late judgment in the House of Lords, already quoted, p. 301, *note*.

† 'De Sepulturâ,' pp. 17, 18. This view is entirely supported by the cases of *Andrews v. Walker*, 2 Lutwych 1030; *Topsal v. Ferrers*, Hobart 175; etc. In each of these cases, a custom was set up, and held bad, as against reason and common right. Some of the cases apply exactly to the conduct of the London clergy named before, p. 444. The custom alleged in one of them was, that, "if any person die within that parish, and be carried out of the same parish, and buried elsewhere, that there ought to be paid to the parson of this parish, if he be buried elsewhere, in the chancel so much and to the churchwardens so much" (Hobart 175). This was itself the case of a London Parish; and prohibition was granted, such alleged custom being held to be "against reason." See, to the same effect, Lord Chief Justice Holt, in 12 Modern 172, and 1 Salkeld 332. On every ground, therefore, the claim for "compensation" is as unsustainable and simoniacal as it is unbecoming.

‡ *Gilbert v. Buzzard*, 2 Haggard, 355; with which compare *Spry v. Gallop*, 16 M. and W. 732. As to "legal memory," see before, p. 440 *note*.

On the subject of the illegality of burial fees, the authorities that might be cited are endless, and would only be tedious to the reader. There is no point of law clearer. The able judgment given in the case of *Andrews v.*

right of the Parishioners, no burial of any one not a parishioner can take place therein without their consent,—either direct or, as approved by them, through their Churchwardens. The Minister has no power to give such consent. The matter concerns the Parishioners; and, even if the churchwardens have given consent, the Vestry may revoke it, and prohibit the burial there of any one not a Parishioner. If leave is granted to bury any non-parishioner in the churchyard, this may, without impropriety, be made conditional on such fees being charged as the Vestry think fit. Such fees will be apportioned, in their appropriation, as is determined on in fixing them. Where any fees are, under any circumstances, paid on burial, the apportionment of these depends on the custom. Old Vestry Minute Books contain frequent entries on these matters. These fees

Cawthorne, Willes, 537, must, however, be specially referred to. And see *Spry v. Gallop*, 16 M. and W. 730.

It is remarkable that Ayliffe says that he “can find no law here with us forbidding the clergy to receive any money for this office.” He cannot have looked far, as the quotations in the preceding pages, as well as those in Appendix A., will show. With his usual candour, however, he adds:—“I find none that expressly warrants them to demand any.” He goes on, in the next page:—“I have said that nothing ought, of *Common right*, to be demanded for the burial of any one in consecrated ground, as the church or churchyard is: yea, *nothing ought to be demanded for the burial service, since a clergyman is obliged herunto in virtue of his benefice.*” He rightly adds that such demand would be *Simony*. ‘Parergon,’ pp. 133, 134. It remains for those who have, in some late Acts on Burial, and on New Parishes and Ecclesiastical Districts, adopted language that, though not enacting, imports a notion of some claim to fees for the performance of burial and other offices of the church,¹ to explain how they came to introduce such a mischievous element. Happily, no such terms, in any such Act, can legalize any such fees. The rule stated by Lord Coke, that “A Statute made in the affirmative, without any negative expressed or implied, doth not take away the common law” (2 Inst. 200), applies in every case, and has been lately solemnly re-affirmed, in an ecclesiastical case, by the Judicial Committee of the Privy Council: *Escott v. Martin*, 4 Moore, P.C.C., 138. See also the language of Lord Campbell in an analogous case, before, pp. 323, 324.

¹ See 59 Geo. III. c. 134, s. 11; 3 Geo. IV. c. 72, s. 12; 1 & 2 Wm. IV. c. 38, s. 14; 3 & 4 Vict. c. 60, s. 18; 8 & 9 Vict. c. 70, s. 10; and 19 & 20 Vict. c. 104, ss. 11, 12, 13; as to fees for church offices generally. See 10 Anne, c. 11, s. 31; 3 Geo. II. c. 19, s. 5; 15 & 16 Vict. c. 85, ss. 32–37; 16 & 17 Vict. c. 134, s. 7; 17 & 18 Vict. c. 87, s. 10; 18 & 19 Vict. c. 128, s. 7 as to fees on burial. In each of these cases, the Acts recognize the Vestry, or other responsible Local Body, as having the actual power to consider and determine the fees. See hereupon, *Andrews v. Cawthorne*, Willes 537; *Spry v. Gallop*, 16 M. and W. 716.

are there usually found to go into the Churchwardens' accounts, and to be accounted for among other sources of income.

An Act was passed in 1818,* prohibiting burial within any church built under that Act; or at a nearer distance, on the outside, than twenty feet from its walls. The only exception allowed in that Act, is in the case of a vault with its only opening by steps on the outside of the outer walls of the church.

It has already been seen that dead bodies found lying in a Parish, whether cast up by wreck, or the result of other accident, must be buried by the Parish officers.† Express provisions were made on this matter, so far as regards bodies cast on shore, by an Act passed in 48 Geo. III. c. 75.‡ This Act requires the finder of such dead body in any Parish, to give notice to the churchwardens and overseers; who are, with all speed, to remove and bury the same, under penalty of £5. Their charges are, under this Act, to be reimbursed out of the county rate. Before that, this and other similar charges were placed in the churchwardens' accounts.

The expenses of burying poor persons may now be charged on the Poor Rates.§

The notion that burial may be hindered by the arrest of the Body for debt, is a vulgar error, without any foundation; though it has sometimes been iniquitously used to extort money.|| The attempt at such detention subjects the gaoler to indictment.¶

Suicides used to be buried in the Highway, with a stake driven through their bodies. This was done under warrant of the Coroner, on the finding of the Jury. The dread of such striking marks of double infamy, may have probably held the hand of some from self-destruction. But the custom was a revolting one. By an Act passed in 1823,** the practice of it was made illegal. The Coroner must now take order that the suicide be privately buried, without any stake, in the parish bury-

* 58 Geo. III. c. 45, s. 80.

† Before, p. 154.

‡ It is probable that the Parish Officers would be liable to indictment for any dead body lying unburied in the Parish. See *R. v. Vann*, 21 Law Jl. Rep. M. C. 41; and compare *R. v. Stewart*, 12 A. & E. 770.

§ 7 & 8 Vict. c. 101, s. 31; 11 & 12 Vict. c. 110, s. 1. See also 12 & 13 Vict. c. 103, s. 17.

|| See *R. v. Fox*, 2 Q. B. 247

¶ *Ib.*, 248.

** 4 Geo. IV. c. 52.

ing-ground, between the hours of nine and twelve at night ; but without any of the ordinary burial rites.

The fences and walls of churchyards should be kept in good order by the churchwardens. It is often said that they should also keep in repair the paths through the churchyard. But this is a duty which clearly belongs, not to them, but to the Surveyors of the Highways.* The Churchwardens should, of course, look to it that the Surveyors do their duty in the matter.

Several Acts were passed, previously to the year 1852, as to the means of enlarging Burial-grounds. It seems unnecessary, however, to do more than mention these, as the Acts of 1852 and following years are more widely applicable, and will, no doubt, be resorted to in preference. These Acts have been already noticed.† They apply to every Parish in the king-

* This would be clear at Common Law ; but the word "churchways" is included in the definition clause of the Highway Act. See further, Appendix A.

† See before, p. 255. The 17 & 18 Vict. c. 87, 1854, applies only to boroughs ; except the last clause, which makes the necessary distance of any new burying-ground from a House, to be 100 yards instead of 200. The following is a brief abstract of the principal parts of these Burial Acts. It will be observed, that they must be read with the comments already made on this class of Acts, and on Committees generally, in the Chapter on Parish Committees, before, pp. 249-259.

On requisition of ten or more ratepayers, Churchwardens are to call vestry, to determine whether a Burial ground shall be provided (15 & 16 Vict. c. 85, s. 10). They may, and shall (in certain events), call vestry without requisition (18 & 19 Vict. c. 128, s. 3). If vestry agree, a Board to be appointed of not less than three nor more than nine ratepayers, which is to be a Body corporate ; a third whereof to go out annually, but eligible for immediate reappointment ; Incumbent to be eligible ; members may resign at any time, on giving notice to Churchwardens in writing (15 & 16 Vict. c. 85, ss. 11, 24). Vacancies to be filled up within a month by vestry (18 & 19 Vict. c. 128, s. 4) ; any two members may summon special meetings (15 & 16 Vict. c. 85, s. 13). Quorum to be three (*ib.* s. 14) ; Board may appoint and remove officers, and pay them, and may rent offices, with approval of vestry (*ib.* s. 15). To keep minutes, and true and regular accounts, to be open to all Churchwardens, Overseers, and ratepayers (*ib.* ss. 16, 17). The accounts to be audited by two auditors appointed by Vestry, yearly (*ib.* s. 18). Expenses incurred to be defrayed out of Poor rate, but not to exceed what vestry shall authorize (*ib.* s. 19) ; but, if vestry refuse or neglect to authorize expenditure declared necessary by Burial Board, the Board to apply to Secretary of State ; who, on inquiry, may authorize the same, without sanction of vestry (18 & 19 Vict. c. 128, s. 6). Two or more Parishes may join (15 & 16 Vict. c. 85, s. 23). Board, with approval of vestry, may contract for and purchase lands (*ib.* s. 26) ; may sell lands with approval of vestry (*ib.* s. 28) ; may, with consent of Vestry, the Parish Guardians, and Poor

dom.* It is important to remark that no *Order in Council*, under either of these Acts, affecting any burial-ground, is legal or binding, unless one month's notice of the intention to propose it, has been fixed on the Church doors, and unless ten days' notice has been given, to the Vestry Clerk and Churchwardens, of the previous intention to make the Representation on which such Order may be founded: and the Churchwardens are *bound* "forthwith" to call a Vestry to consider such intention.†

It is a matter of public decency that, when once buried, the dead should remain undisturbed. Accordingly, it is only under special circumstances that any Body can be removed. Thus, none can be removed to another burial-place, except by special faculty from the ordinary. Nor can any be taken up for examination or otherwise, except on the order of the Coroner; who can however, upon reasonable ground, and within reasonable time, order it to be taken up, and an inquest to be held on it; and is bound to do so. It is, indeed, an indictable offence to bury a man that has died a sudden or violent death, before an inquest has been held upon him; and the Parish is liable to be amerced, if notice is not, in every such case, duly given to the

Law Board, appropriate Parish lands (*ib.* s. 29); may contract for works to be done (*ib.* s. 31); to fix fees for burial, subject to approval of Secretary of State (15 & 16 Vict. c. 85, s. 34; 18 & 19 Vict. c. 128, s. 7). Management of grounds to be vested in Boards (15 & 16 Vict. c. 85, s. 38). Secretary of State may make regulations as to grounds (*ib.* s. 44); and may order inspection of same (18 & 19 Vict. c. 128, s. 8). Boards may be appointed for townships, etc. (*ib.* s. 12); may let land, with approval and subject to regulations of Secretary of State (*ib.* s. 17).

* The Parishioners should take care to proceed cautiously; and also not to be frightened into any steps by the language of any "Inspector." It should be remembered that any land belonging to the Parish is available for the purpose of a new burial-ground. This will often save much expense to the Parish.

† The great importance of the practical points that have arisen, and are daily arising, out of the subject of the "consecration" of burial grounds, in consequence of the wide application of the above Acts, has made it desirable to treat on that matter more fully than has been done before, p. 444 *notes*, or than can be conveniently done in a note. I have therefore treated it separately in the Appendix (A); to which the reader's attention is specially requested. I have there shown that the whole pretence as to "consecration" forms but another illustration of those ecclesiastical usurpations of which so many instances have already been demonstrated in this Volume. The illegality and Simony of all claims on account of Burial fees, have already been shown in this section.

Coroner.* The Coroner may, where the inquest is held before burial, order the Body to be buried before registration.† In case of a Body taken up by his order, he must, after the proceedings are closed, or before it, if necessary, issue his warrant for the burial.

At the conclusion of this topic, the last in relation to the common rights of the Parishioners where ecclesiastical offices become involved, it is impossible for one who rightly regards the institution of the Parish not to pause for a moment, in contemplation of the extraordinary abuses which have grown up, in the application of those endowments which the piety of our forefathers freely bestowed, for the benefit of the parishioners of the Parishes of England. Those endowments were given "for the ease and benefit of the Parishioners, and not of the Parson:"‡ they have been treated as if bestowed for the emolument and exaltation of the parson alone.§ They were given upon the express condition that, out of them, the fabric of the *church* itself should be maintained; the *poor* should be provided for; and the minister have his recompense for the discharge of *all the offices of the church*.|| But what are the facts at this day before us? Church rates have to be voted by the Parishioners to uphold the fabric of the church; poor rates have to be made to support the poor; fees are sought to be exacted for the performance of various offices of the church; while the whole endowment has become engrossed, in every case, to the sole aggrandisement of the "parson,"—often even to the exclusion of the actual minister.¶ Finally, in violation of the most explicit and often-repeated denunciations of the Law, it has been attempted to make the garb of a minister of religion the cover for grasping at temporal domination.

What is thus summed up, has been proved, in the course of

* See before, pp. 373-379.

† 6 & 7 Wm. IV. c. 86, s. 27.

‡ Lord Chief Justice Holt, 3 Salkeld, 88.

§ That is, it must always be remembered, the parson, whether a beneficed clergyman in full possession, or an appropriator, or a lay impropiator. This is a very material point.

|| See before, p. 308 *note*: also Lyndwood, as before quoted, p. 445 *note*; *ib.* 'Constitutio Othonis,' p. 8; and Ayliffe, quoted before, p. 447 *note*.

¶ See before, pp. 28-31, as to "appropriators" and "lay impropiators;" and p. 30, *note* †, as to curates.

the foregoing pages, by evidence that cannot be controverted. And I desire it to be well understood that the evidence thus produced, is only a small part of that which could have been produced, and which the careful searcher after truth will readily find. It behoves those who boast themselves of the glorious fruits of the *Reformation*, and of the great spirit of *Protestantism*, to take heed that they show some consistency in reference to that whereof they boast. It behoves them to mark, what time it is since when most of the encroachments and usurpations, made in the name of the Church, have grown up in England.

It behoves well all those who value the free Institutions of England, and all those who reverence the true simplicity of genuine Protestantism, and all those who would see a Christian ministry to be identified with the spirit and practice of "peace, charity, and goodwill to men," and with a practice and life consistent with their profession, to mark well how far *the Law of the Church* is observed, by those who now alone enjoy the fruits of those emoluments which our fathers have left for the support of the above purposes in every Parish. It is not any enemy of the Church, but it is *The Law of the Church* itself, which pronounces it to be *Simony*, and denounces the most solemn anathema, if any minister of the Church shall take a fee for the performance of the rite of burial, or any other office of the Church;* which indignantly declares such an act to be one of "blind greed,"† a thing "horrible to be heard of," and those who so demean their sacred office as "miserable" and "unworthy;" and which, having found the greed of gain to be more strong than the dread even of anathema, at length solemnly enacted, that any minister thus guilty should be deprived of his benefice, and be declared incapable for ever of any clerical function.‡ And this, though kept from vulgar knowledge, is

* See Lyndwood, p. 278; "*De Simonid.*" *Constitutiones Provinciales* of Richard Wethershed, Archbishop of Canterbury, A.D. 1229, already quoted, p. 445, note. "Ne pro sacramentis ecclesiasticis aliquid exigatur.—Episcopi et archidiaconi diligentur inquirant, et inventos ut *simoniacos* puniant, qui contra constitutionem Othonis [see the following note] pro sacramentis ecclesiasticis quicquam exigunt." *Constitutio Othobonis*, as before, A.D. 1268 (fifty-three years after Magna Charta). Lyndwood, p. 81. See also Aylliffe, quoted before, p. 447, note.

† "Cæca cupiditas." 'Constitutio Othobonis,' Council of London, A.D. 1268. See also before, p. 450 note †, on Consecration.

‡ "Auditu horribili certior factus quosdam Sacerdotes nominem, nisi

The Law of the Church at this day.* It is not any enemy of the Church, but it is *The Law of the Church* itself, and the

sumpto pro sacramentis pretio, ad Pœnitentiam admittere, quod maxime detestabile est, statuit de illis exactissimam fieri inquisitionem, repertosque à Beneficio si quod habeant removeri; et ab officio perperam gesto in perpetuum suspendi.—*Auditu horribili audivimus* et relatu, quod quidam *miseri sacerdotes*, dum forsàn in beneficium vicariæ ad firmam, seu quâcunque aliâ quæstus causâ, proventus ex altari aut ex pœnitentiâ provenientes recipiunt; non aliter admittunt ad Pœnitentiam confitentes, nisi prius ab ipsis in signum avaritiæ suæ quippiam de pecuniâ reponatur. Sicque faciunt de *aliis sacramentis*. Quoniam igitur qui talia agunt, et Regno Dei, et beneficio ecclesiastico *sunt indigni*, statuendo districtè præcepimus, ut inquisitione exactissimâ per Episcopos de his factâ, qui tale quid commisisse repertus fuerit, *et à Beneficio, quod obtinet, removeatur omnino, et ab officio, quod perperam gessit, perpetuo suspendatur.* “Constitutio Othonis,” at the Council of London, A.D. 1237 (twenty-two years after Magna Charta), Lyndwood, p. 12. See *ib.* p. 8.

* The Acts of 25 Hen. VIII. c. 19; 27 Hen. VIII. c. 15; and 35 Hen. VIII. c. 16, which suggest a revision and consolidation of the Constitutions and Canons of the Church, all agree in expressly providing “that all such canons, constitutions, ordinances, and synodals provincial, being already made, which be not contrariant nor repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King’s prerogative royal, *shall still* be used and executed, as they were afore the making of this Act,” till that revision and consolidation should be made;—which has never been made. This proviso saves in force all the ecclesiastical constitutions made before 1543, *including all those quoted above, as well as in Chapter VI.* The Act of 13 Car. II. c. 12 is equally express in declaring that it is not to be taken to “confirm the Canons made in the year 1640, nor any of them, *nor any other ecclesiastical Laws or Canons not formerly confirmed*, allowed, or enacted by Parliament, or by the established Laws of the Land as they stood in 1639.” The Laws and Canons above quoted had all of them, it has been just shown, been confirmed and allowed by Parliament in these Acts of Henry. On the other hand, the Canons of 1603 were never confirmed nor allowed by Parliament, though they had the King’s license. Their validity with the clergy (they have none whatever as regards the laity, as already fully shown) in no way affects the force and vitality of those Laws and Constitutions which have been thus shown to have received the express allowance and confirmation of Parliament itself.

It is worthy to be noted, that the Acts of Henry above cited, required that the revision and consolidation above named should be done by thirty-two persons, of whom sixteen should be laymen and sixteen ecclesiastics. It is to be regretted that the intention was never carried out. Such being the case, however, all the Constitutions referred to, remain the binding Law of the Church to this day. The Canons of 1603 themselves allude to the Constitutions then in force. See Canon 81. Sparrow’s Canons very properly contain many Canons and Constitutions besides those of 1603. The latter could not repeal or alter any earlier ones, even as to the clergy; as it has been expressly and repeatedly declared, by Parliament itself, that the earlier ones shall all remain good and valid until consolidated by the joint Commission

venerable Fathers themselves of the Reformation in England, that have pronounced the engrossment, by the holders of ecclesiastical endowments, of what rightfully belongs to the

named—a thing which was never done. The Canons of 1603 were made by ecclesiastics only; and are thus *absolutely void, even as regards the clergy*, in every point wherein they differ from earlier Canons or Constitutions.

It is necessary, in consequence of a strange misapprehension contained in a late Judgment in the Arches Court—(*Liddell v. Westerton*, 20 Dec. 1856),—which, uncorrected, would be very mischievous,—to notice the Act of 1 Edw. VI. c. 12. Had the rule for interpretation of Statutes already quoted (p. 388) been heeded, this misapprehension would have been impossible. The *intention* of the Act of 1 Edw. VI. c. 12 is elaborately stated, in its own preamble, to be, to mitigate the severity of former penalties, imposed by Act of Parliament, for political offences, and, what was then intimately blended with these, for holding certain religious *opinions*. The Acts of 25 Hen. VIII. c. 19, 27 Hen. VIII. c. 15, and 35 Hen. VIII. c. 16, do not come within either of these descriptions. Again, the second section of the Act *specifies the Acts as to religion that are repealed*. The enumeration *includes* Acts of the very years 25 Hen. VIII. and 35 Hen. VIII., but *omits* the Acts above named; while the section is very precise in stating that it embraces only Acts concerning “*opinions*” and “*doctrines*.” Apart from this, which is conclusive in itself, the Act of 25 Hen. VIII. c. 19 is well known to have been always held to be the Law, and to have been adjudged to be so, by the highest legal authorities, long after the time of Edward VI. Lord Coke himself expressly so reports it in a great case before the Privy Council and all the Chief Justices, as well as in another, of a Prohibition to the Ecclesiastical Court. He even tells the reader to “*see and note*” the Act (13 Reports, pp. 17 and 47). Nothing, therefore, can be plainer than the existing force of 25 Hen. VIII. c. 19, and the rest.

Moreover, so much of those Acts as relates to the present point is merely declaratory of the Common Law (Coke, 13 Rep. p. 17). It would be immaterial, therefore, whether the Acts themselves were repealed or not. But, even were they repealed, and were this point not the Common Law, the only result would be (for the Act of 1 Edw. VI. c. 12 is expressly limited, in what it repeals, to *Acts of Parliament*), that the whole of the ancient Canons and Constitutions would still remain the *Law of the Church*,—but *without the limitations* which the Common Law and those Statutes place upon them. Cranmer admits this, in the very reasons urged by him for the passing of those Acts (see Burnet's Hist. Ref. vol. i. p. 330, and No. 27 of Records).

Both the premises for and the conclusions from the misapprehension in the above judgment, are thus shown to be, from every point of view, unsound and unsustainable.

It may be added, that the Constitutions and Laws of the Church cited above, and in Chapter VI., so far from being “*contrariant and repugnant*,” have been shown to be corroborative of the Common Law, and only effectual to enforce the conformity of the conduct of the Clergy with the consistent character of the Church itself and the Common Rights of all the Laity. They do not touch any points of doctrine or opinion, but deal with matters of personal conduct, and consistency of practice with profession.

poor, to be the result of “wicked avarice,”* and a thing to be “worthily noted of ingratitude;” † and that have hurled, against the conduct of those who seek still further to depart from the character of the Christian minister by aiming at secular domination, the charge of being moved by “gross self-seeking and greedy rapacity;” and declare such conduct itself to be a “horrid crime.” ‡

It is a fact not unworthy to be well considered in this regard, that, while the express Law of the Church is found to have been thus declared through many centuries in England, it was never more clearly or emphatically thus declared, than during and after the time when the great struggle for the liberties of England was being made, and while the record of those liberties was being repeatedly insisted on. § The Great Charter of John, repeated by Henry and his successors, begins by declaring the rights and liberties of the Church to be inviolate. It was *after the date of that Great Charter*, so repeated, that the most precise of the declarations as to the illegality of any minister of religion taking part in secular affairs, or accepting fees for fulfilling any of the offices of the church, were made. Such was then the opinion of the greatest churchmen in England, as to what was alone consistent with the true character and honour of a Christian ministry.

Those who hold in honour the real function, and would maintain the consistent character, of the Christian Minister,—as well as those who hold in reverence truth and integrity for their own sakes, and those who regard the maintenance of the rights of parishes and of all parishioners as things inseparable

* See quotation before, p. 307, note †.

† See quotations before, p. 95, note.

‡ See quotation before, p. 300, note ‡; which continues as follows in the original:—“*Grave ac sordidum reputamus quod clerici quidem terrena lucra et temporales jurisdictiones fœdâ petulantia et avidâ voracitate secant, etc. . . . Nos igitur horrendum hoc vitium extirpare volentes,*” etc. The Constitution of Archbishop Wethershed explicitly says:—“*Inhibemus etiam, sub interminatione anathematis, ne quis sacerdos habeat vicecomitis vel præpositi sæcularis officium.*” Yet it is exactly this “*præpositi sæcularis officium*” which is what is sought to be usurped by every minister who attempts to engross the chair at Parish meetings. The constitution thus quoted is still *The Law of the Church*. See before, pp. 301 note, 453 note*.

§ “The said two Charters (Magna Charta and the Charta de Foresta) have been confirmed, established, and commanded to be put in execution, by thirty-two several Acts of Parliament in all.” Coke, *Proeme* to Second Inst.

from the maintenance of our most valuable Institutions and the true welfare of the State,—cannot but deem the matters thus shortly glanced at, as demanding their most grave and earnest consideration. Let them bethink themselves whether the character, usefulness, integrity, and honour of the Church and its Ministry, will not be better sustained by the observance of that which, whatever pretences or evasions may be set up, is alone consistent with their profession and their endowment, and which is still *The Law of the Church*, than by a Protestant people letting any sanction be given to those unrighteous encroachments, usurpations, and extortions, which have been shown to have so unlawfully grown up in England, since the time which it is the boast of Englishmen to speak of as “*the Reformation*.”

SECTION IX.

REGISTRATION.

It has been already stated that the Officers who fulfil the work of Registration have not, with the exception of the Minister, any proper and regular connection with the Institution of the Parish. As, however, the fact and mode of Registration are, in themselves, of great importance; and as, in despite of the anxiety systematically manifested to break away the connection of this work from its natural and most convenient relation to the Institutions of local self-government,* the Parish divisions have been obliged to be, for the most part, taken as the Registration "Districts;" it will be right to glance at the system of Registration now in use.†

There are now, in England, five different matters of Registration in actual use, in reference to the identification of the personality and pedigree of all men. These are, *Birth, Baptism, Marriage, Death, and Burial*. Of these, the first and fourth are made exclusively by the Registrars appointed under late Acts on the subject. The second and fifth are made exclusively by parochial and other Ministers. The third is made, partly, and according to circumstances, by parochial and other Ministers, and partly by the Registrars.

The Rector, Vicar, Curate, or officiating Minister, is bound to make and keep a register of all Baptisms and Burials, within all parishes and chapelries in England; the register of each of

* It is well worth noting, as an illustration of this, that in the last *Census Act* (1851), the *Hundreds*, by which the census had, as a matter of course, heretofore been taken, were carefully ignored, and arbitrary "Districts" substituted, at the discretion of the Registrar-General. Confusion, and the impossibility of comparisons with former censuses, were thus introduced. But the great end was gained, of insidiously removing one of the most ancient and significant of the *landmarks* of our free institutions.

† The principal enactments now in force on the subject in England, are the 52 Geo. III. c. 146, partly amended by 11 Geo. IV. and 1 Wm. IV. c. 66, ss. 20, 21, and 22, as to Registries of Baptisms and Burials; and 6 & 7 Wm. IV. c. 85 and 86, with amendments by 1 Vict. c. 22, 3 & 4 Vict. c. 92, and 19 & 20 Vict. c. 119, as to Registries of Births, Marriages, and Deaths.

these matters having to be kept in a separate Book, according to a prescribed form.* Full provision is made for securing the due making and safe keeping of these registers. Copies are to be annually sent to the Registrar of the diocese. Very heavy penalties—no less than felony and transportation—are attached to any fraudulent dealing with any of these registers.

As regards registers of Marriage; the making of these has been much altered, to meet the altered state of the Law on that subject. When Marriages could be solemnized only according to the rites of the Established Church, the same method of registration was sufficient as still remains for baptisms and burials. But the alterations in the Law of Marriage, introduced since 1830, have made it necessary to repeal the old system, and to adopt one of considerable complication. The motive for this was only, that the scruples of men, on a matter on which many feel strongly, might not be offended, while the essential record of the facts should be secured. Marriage may now be celebrated either, as of old, in the Parish Church, or in licensed chapels, according to the old forms; in a registered place of worship, according to any forms that any Body of worshipers prefer; or, without any form of religious rite at all, as a mere civil ceremony, by the Registrar.† In the first of these cases, the Minister remains the Registrar,—fulfilling herein, as in the registration of Baptisms and Burials, that part in which, “for the help and readiness of his pen,” as before stated,‡ the law “hath borrowed some use” of him, “in a few easy matters,” for the convenience of the State.

Books are provided by the Registrars to the Ministers, and also to the accredited officers of the Quakers and Jews, in which they are bound to enter, in duplicate, a register of every Marriage. One of these duplicates is to be sent quarterly to the superintendent Registrar, just as the district Registrars send copies of their registers. The superintendent Registrars send them on to the general register office.

As concerns marriages celebrated in registered places of worship,—they must be celebrated in the presence of some Registrar of the district, who must make the register of each such marriage. In the case of marriages contracted at the office, and in the presence, of the superintendent Registrar, the register of

* 52 Geo. III. c. 146.

† See 6 & 7 Wm. IV. c. 85.

‡ See before, p. 327.

each must be made also by the Registrar, in the prescribed form. Copies of the registers of each of these two last classes of marriages, must be sent, quarterly, to the Superintendent Registrar.

As regards the registration of Births and Deaths, it has already been shown how the Registrars are appointed. Provision is made for their offices and salaries out of the fund levied under the *name* of Poor Rate,—but which is, very wrongly, appropriated to all sorts of other purposes, the most heterogeneous that can be conceived.

The Registrars are furnished with Books in prescribed forms ; in which entries are to be made in a prescribed method ; and which are to be kept, for security, in a manner specified. It is the duty of the Registrar “to inform himself carefully of every birth and every death which shall happen within his district.” He must register each as soon as possible ; and is not permitted to take any fee for doing this. He is, however, paid very handsomely for his trouble ; namely, two-and-sixpence for every one of the first twenty entries made in each year, and a shilling a-piece for the remainder.

In case the Registrar does not “inform himself” of a birth or death, and register the same, the parent of any child, or the occupier of the house within which any birth or death happens, may, within forty-two days after the event, give notice, requiring the Registrar to register the same. When any new-born child is found exposed, the Overseers and Coroner have the duty to give such notice cast upon them, respectively, according as the child is found alive or dead.

In cases of Death, the parent, or occupier of the House, or some one present or attending, is required to give the necessary information to the Registrar, to enable him to complete his registers.

Provision is also made for the case of children born at sea ; the captain of the vessel being bound to send a certificate thereof to the Registrar-General ; who files the original, and keeps a copy in a special register called the “Marine Register Book.”

No registry of Birth can be made after six months from the birth ; and only within six months,—the forty-two days above named having been let pass,—on special declaration, and in a special manner, and on payment of a fee. The name given in baptism may, however, be entered on the register, after the

original registration, at any time within six months. All that is then needed is a certificate of the baptizing minister, and the payment of a trifling fee.

No dead body can be buried, without the production to the officiating minister, before burial, of a certificate by the Registrar as to the due registry by him of the death; except in the single case of the Coroner's order, as named in the last Section.

Any person interested, can search the original registers, and obtain, for a slight fee, a certified copy, duly verified, of any particular out of any of these registers. The Superintendent Registrars, and the Registrar-General himself, are required to have Indexes made; and to give, on payment of a fee, a certified copy of any entry.

In addition to the full provision for registration, an outline of which has thus been given, it should be added that, by a later Act,* various older special Registers, neither parochial nor made under the Registration Acts, are declared to be authentic, and valid as evidence. They are to be kept in permanent and secure custody; and there is to be the same convenience of search and extract in and from them, as there is in case of the registers made under the system which has now superseded these and all other methods.

The defect of the system of Registration thus established is, the not making the fulfilment of these functions an essential incident to the Institution and the duties of the Parish. While every facility for collection and communication might thus be secured, at least as thoroughly as now, the charge on the public would be less, and there would be far greater security to the public that the duties of the local registrars were rightly fulfilled. As in every other case, centralization, with all its anxiety to destroy separate local vitality, is obliged to have recourse to local means. But it necessarily employs unchecked, and so practically irresponsible, and therefore more or less careless and negligent, means; instead of these being under the immediate eye of, and responsible to, those concerned. A pedantic *appearance* of system and uniformity is got:—while the public service, as well as the integrity of our Institutions and the moral tone of society, suffer.

* 3 & 4 Vict. c. 92.

SECTION X.

ENCLOSURE OF COMMONS.

AMONG the matters by which the interests of Parishes are greatly affected, is the enclosure of the Common Lands that lie within their bounds. The antiquity of the division of the Parish, has brought with it this among its other incidents. There are few Parishes which have not had, even within memory, their Commons, though many of these are now enclosed.

This is not the place to deal with the different sorts of Common Lands, or the varieties of the Common Rights enjoyed over them. Those are matters which depend on local custom. They vary greatly. What concerns the present subject is, the mode in which Common Lands are changed from that character into private property. This is a point on which much misconception exists. It will be well, therefore, to notice, briefly, as well the policy of such change being permitted, as the modes in which it takes place.

As to the policy and actual circumstances under which enclosures of common land have taken place, and are taking place, in England, there are two things to be considered: *first*, the expediency of improving the productive powers of the land; and *secondly*, to whom do those common rights which are affected really belong. The second of these points may best be considered before the first.

The greatest infringements upon common rights in the land, have taken place by grants to individuals out of what are called Crown-lands,* including all forfeited and confiscated estates. Such grants have always been, and are, illegal at Common Law. Many times they have been revoked by Statute, and the lands have been required to be again applied to their only legal purpose—the national revenue. The very extent of the wrong in

* That is, not, as often supposed, lands belonging to the occupier of the throne, but lands belonging to the State, and which have been, from of old, set apart towards raising the revenue or supporting the dignity of the Office of the Crown.

later times, has prevented the application of the remedy.* It is needless to enter now upon the wholesale frauds that have been committed by such grants. Another great infringement, of a similar class, was committed by the Act of Charles the Second which abolished the burthens due, as the primary and absolute condition of their holding, from the large landholders to the Crown (that is, the State); the loss to the State being compensated by imposing the burthen of Excise on the people, not on the landholders—who were released from the conditions of their holding, the points of *common right* incident to that holding; while these landholders retained to themselves all the dues and claims that had been payable to them, from their copyhold tenants, solely in order to enable them to meet those very claims of the Crown on themselves which were then abolished! This was a double fraud: by which, while every constitutional principle was violated, the great landholders were in two forms gainers; and the body of the people, as well as all copyholders, had perpetual burthens imposed on them, in order to enable the iniquity to be accomplished.†

But even this, though necessary to be noted here, as a gross breach of the common rights in the Land, is not a wrong that is aggravated by the enclosure of commons. It is, indeed, rather the reverse.

All lands in England were originally held either as *folk-land* or as *book-land*; that is, either under Common or only temporarily Individual rights, or—*by special grant of the Legislature in writing*—in hereditary possession upon certain conditions. The main and inseparable parts of these conditions were, the maintenance, at the sole expense of the landholders, of all roads, bridges, and defences.‡ Our numerous common lands may, without entering into fuller explanations and details here, be said to be the remains of the old folk-land. What we now call *commons*, are, however, always strictly Local in the common or temporarily individual rights over them; §—a distinction which must not be forgotten. It is the land of the *folk*, in common, in a particular and not a general sense. The modes of common occupation, the nature of the rights and

* See before, p. 144 and *note*.

† 2 Blackstone's Com. 77.

‡ See before, p. 104, and after, p. 469.

§ *Lammas* lands, in which there is an *individual* right of use during part of the year, and a *common* right during the remainder, are an apt example.

times of occupation, differ widely in different parts of England. Still it belongs to the commonalty, for use in common, not to any individuals. But it must always be remembered that, though it is thus called "common land," that term is used in a special sense. Rights of property do exist over and in it, in reality, as complete as in the case of any piece of book-land. Certain persons *only* have always had the right, in each place, to the common use. All England has not that right. A mere stranger is a trespasser as much as in any private garden. This consideration is a main element in the right understanding of this subject. Several of the points that have always been inquired of at the regular local courts, have special reference to such trespasses,—both by one who has a right, but has taken more than his right, and by the act of mere strangers: thus:—

"If the common be charged by any tenant with more beasts than he should hold, after the quantity of his tenure [the land he holds].

"Of all trespassers [on any part of the common, whether] in corn or grass, or in pasture, or groves, or meads; or fishers, or fowlers, or hunters, or hawkers [sportsmen].

"If any man have encroached on any of the soil; that is to say, land, meadow, moor, pasture, or any vacant ground;" etc.

Thus the question of the expediency of improvement, and that of the actual owners of the common rights, are brought close together, and must be dealt with as one. And it comes clearly to this. If the attempt by any one Common holder to do more with, or get more out of, the common land than he has before done, is, in so far, an encroachment upon the rights of all the others, the inducement to any one, and therefore to all, to bestow on it what cost and labour are necessary to its best use,—but for the reward of which, the future only can be looked to,—is absolutely hindered so long as it remains common land; and can only become realized when permanent individual rights are recognized. The actual right and interest of the *General Public* in the common land, consist only in maintaining the accustomed and convenient highways over it, and in taking care that nothing be done on it or with it that can be otherwise than beneficial to the State. The General Public have no personal common rights over it.

As population has increased, it has thus become felt of great advantage to all immediately concerned, as well as to the State.

that some common lands should have permanent individual rights over parts of them recognized,—that is, that they should be enclosed, and so be able to be improved. The lover of the picturesque will often lament over the enclosure of ancient gorse-grown acres;—as he will also over the superseding of the majestic full canvas-clad square-rigged man-of-war by the screw steamer, which ploughs the waters in spite of opposing wind and tide. But, if the work is rightly done, new shapes and characters of beauty are developed, which make amends for that which is lost.

Such common lands have, then, from time immemorial, been in the habit of being, either in whole or part, converted into *book-lands*, or permanent private property, under certain conditions and in certain modes.

There are two distinct and very different modes in which this conversion takes place. Thus, permission is often given to individuals, by the Inhabitants in Vestry assembled, to enclose certain parts of the Common or Waste within the Parish, on certain conditions; and a record of the transaction is entered on the Parish Minute Book. To some persons, who have not examined into the subject of Parish history and acts, this may be unknown; and very likely the title so derived may be one that many a Conveyancer would be puzzled to deal with. It is probable, however, that there is not a county in England in which the sole title to good estates, or parts of good estates, to the extent of many acres, has no other root of title. It has been the custom in some parishes, to keep a distinct account of moneys received in consideration of leave thus given by the Vestry to make these enclosures. Sometimes they are entered under the name of “Waste Land Fund;” and a valuable Parish Stock has often been accumulated by this means, which may be appropriated to any purpose the Vestry pleases, and is thus of far more substantial use than the right of common over those pieces of ground ever was.*

* It must not be forgotten that a Constitutional question arises here, as to the right of any *present enjoyers* to destroy, for all future time, that property of which they really have only the absolute ownership of the usufruct. The Parson cannot sell the glebe: can the Parish part with the Common right in any Common Lands? By the Common Law of England no man can consent to a breach of Common Right, even against himself. (See 5 Coke's Reports, p. 64, and Vaughan's Reports, p. 337.) Can the enjoyers of a Common Right, —enjoying it solely by virtue of the perpetual property which, as a *Com-*

Another mode of making these enclosures, is by Act of Parliament. The complication of rights involved, was the natural origin of this method. The practical result of it, however, comes to pretty much the same thing as that of the former one. By each mode alike, there must be a Public Meeting of those interested, and the assent of the Majority obtained. Formerly, a special private Act of Parliament was applied for in every case. This was not granted without proof of a certain full proportion of consents by those interested; and certain clauses protective of the public rights and interests were always inserted. There was, however, an obvious liability to abuse in this system, by the smuggling in of clauses unknown to the mass of those concerned. More lately, some general rules, applicable to all cases, were wisely adopted. The Act of 41 Geo. III. c. 109, was the first that attempted this.* The Act of 6 & 7 Wm. IV. c. 115, more fully carried out the object. No step towards enclosure can, under these Acts, be taken without the previous consent of two-thirds of those interested, nor without the holding of a *public meeting* for discussion of the matter, after full notice. This is an important point, and contrasts most favourably with the anxious

monalty, the inhabitants of the place have in it,—destroy that Common Right? Common reason seems to say, *No*. The result may, no doubt, in particular cases, be advantageous. But it is liable to grievous abuse. It is setting the immediate advantage of special persons against the permanent rights of the inhabitants of a place. It would seem, then, that, as matter of Principle, the only Constitutional course is, to do such a thing *under the sanction* of the General Legislature. The mode of detail is a different question. Modern legislation has not, in point of fact, done its duty in this behalf so well as those Parishes where the compensation paid has been put into a Common Parish Stock, which can be applied to general purposes for the common good. *This is the true and only sound course*. See after, p. 531 note.

It will be observed that these remarks apply rather to "*Commons*," usually so called, and lying compact together, than to the slips of what are more usually called "*Waste*," lying at the sides of the roads. In the case of the latter, the conversion of them into Book-land by the Parish, *on conditions fully indemnifying the Parish*, is often a thing of unquestionable propriety. And it is to these that such sales as are alluded to in the text, have been, in fact, almost entirely confined. This distinction is important. Though, technically, both kinds are 'common,' practically speaking the Road-side *Waste* and the Parish *Common* are very different things. See, as to these strips of roadside waste, after, pp. 467–469. See also, p. 480 and note †.

* See also, in connection with this subject, the Acts, 29 Geo. II. c. 36; 31 Geo. II. c. 41; 13 Geo. III. c. 81; 1 & 2 Geo. IV. c. 23; 1 & 2 Wm. IV. c. 42, § 2; 2 Wm. IV. c. 42; 3 & 4 Wm. IV. c. 35; 3 & 4 Wm. IV. c. 87; 3 & 4 Vict. c. 31.

desire shown in later Acts, professing to have great regard to the public interests, to shun public meetings, and to get everything done in the dark, by hole and corner means, without letting there be any opportunity for discussion. The commissioners for enclosing and allotting are also to be chosen at a like public meeting. There are several other provisions, which recognize the regard due to the consent and discretion of those concerned, as the main thing. Nor are the actual rights of the General Public forgotten. It is expressly required that, before the land is allotted, sufficient highways shall be set out; and there is a further and very valuable provision, that no such common land shall be authorized to be enclosed, if it lies within ten miles of London, or within different specified distances of any other town, according to the size of the town. The maintaining of a public lung is paramount to the results of the mere improvement of the land.

The Act of 8 & 9 Vict. c. 118, consolidates and extends the general regulations for the enclosure of commons.* It cannot be "applied" by any one or more proprietors, as is sometimes supposed. It practically embodies the provisions already mentioned, as well as many others. In several respects it is an improvement upon the previous regulations. In some respects it is certainly less satisfactory. Thus, the two-thirds of consents which it requires, are two-thirds in *value* only, instead of including, as the former Act did, *number* also. This alteration is extremely unjust. The interest of the poor man in his one acre is as much to him, as that of the rich man in his thousand acres.† And this Act is obliged to be inconsistent in the perpetration of this great wrong. For, in cases where a class, such as freemen, burgesses, or others, enjoy rights of common, the express assent

* Functionarism has made rapid progress since the beginning of the reign of William the Fourth. Consequently, this Act appoints a central "Commission;" which is renewed by an annual Act, and makes its annual reports to Parliament, naming the Commons proposed to be enclosed; which Reports must go through what is, unhappily, but the mere *form* of being confirmed by Parliament before the enclosure is legalized. Other Acts in force on the subject of Commons' Enclosure are, 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; and 17 & 18 Vict. c. 97. It has already been remarked that, no sooner does an engine of Functionarism get established, than it sets to work to manufacture means and excuses to perpetuate and extend its existence and power. It becomes, in short, a regular *officina* for jobs and empirical Acts of Parliament.

† See before, p. 63.

of two-thirds in number is required. But public meetings, with full notice, are still required to be held in every case, and at every step, both before allotment and after; so that there is every opportunity for opposition, suggestion, and rectification. It ought to be added, that it is prohibited, by the express provisions of this Act, that any town or village green shall be enclosed; while powers are given to make allotments for purposes of public recreation, and other allotments for the labouring poor. Both these last provisions are, however, unhappily only *powers*. They are not made, as they assuredly should be, universal *requisitions*; and they are otherwise not so satisfactory in their details as could be desired.

A point of considerable interest and importance arises, incidentally, out of the subject of enclosures of waste lands; which, while it shows how identified all such matters are with the obligations and responsibilities of the Parish, well illustrates the practical bearing, at this day, of some of the fundamental principles touching the tenure of land, upon the rates and burthens of the Parish and the duties of its officers.

It has been already seen that, if a highway is out of repair, flooded, or from any other cause impassable, any passenger may use the adjoining private land with as much freedom as if it were the accustomed highway.* It has, moreover, been seen that one of the ancient inseparable obligations upon all land in the kingdom was, the maintenance of roads.† Furthermore, it has been seen that it has been, from of old, required that there shall be an open and unenclosed space, of at least two hundred feet in depth, on each side of every highway.‡ All these matters have, in point of fact, an intimate relation to one another. In old times, highways were seldom artificially made, so as for the usual track to be sound for traffic at all times of the year. The obligation to maintain the highway was therefore best fulfilled, by leaving unenclosed a width of open land on each side, sufficient for passage whenever the accustomed road should be impassable. This was accordingly done in most cases, even when enclosures of former wastes came to be made; whence it has happened, that there are strips of waste land at the sides of so many of the country highways throughout England to this day. But it has also, very rightly, followed from these conditions, that, if any owner of adjoining land has,

* Before, p. 349.

† Before, pp. 104, 462.

‡ Before, p. 333.

in later times, taken on himself to enclose the strip of waste lying between his old enclosed ground and the road, he becomes forthwith liable to the repair of the road itself. This is a consequence that attaches to his act, in strict justice and logical rightness; and it is a striking instance of that rightness and justice which are found to characterize the whole of the Common Law of England, when its *principles* are truly inquired into and understood. The encloser would appropriate a permanent personal advantage: it is right that he should compensate for it by incurring a co-extensive obligation.

This important consequence of the enclosure of strips of waste, ought to be more generally known and acted on by Parish Authorities than it is. It will oftentimes save heavy expenditure of the Parish funds.*

In immediate connection with the same point, it is well to mention that, whenever a strip of common or waste adjoining the boundary of a Parish is enclosed, the new enclosure

* This point is one of so much practical importance, and at the same time certainly so little generally understood, that it will be well to quote a few of the principal authorities on it.

“The public are entitled to a good means of passage; and it is the good means of passage which is the Highway, and not only the beaten track; for if the land adjoining is even sown with grain, they may go over the grain.

“If there is a common Highway which has been always repaired by the parish, and J. S. has land not enclosed near adjoining the highway, on both sides of the way; and he, for his own profit, encloses his land on each side the way; he *thereby takes upon himself* the reparation of the Highway, and *frees the parish from the reparation thereof*: and he will be liable to do that repair whenever the road needs it. And it is not enough for him to make the road as good as it was at the time of the enclosure; but he must make a perfect good road, without having any reference to the state of the road as it was at the time of the enclosure;—for, when the way lay through the open fields, unenclosed, the King’s subjects, whenever the road was found-erous, went, for better passage, upon the fields adjoining, out of the common track of the road.”—1 Roll. Ab. 190. And see Henn’s case, Sir W. Jones’s Rep. 296.

“And if the way [so made] is not sufficient, any passenger may break down the enclosure, and go over the land.”—3 Salkeld, 182, pl. 4.

“If the usual track is impassable, it is for the general good that people should be entitled to pass in another line.”—Lord Mansfield in *Taylor v. Whitehead*, Douglas 720. See also, *Absor v. French*, 2 Shower, 28.

“If one enclose land on one side, which hath been anciently enclosed of the other side, he ought to repair all the way; but if there be not such an ancient enclosure of the other side, he ought to repair but half that way.”—1 Hawk. P. C., c. 32, s. 7; and see *ib.* s. 6.

The strip of waste lying between enclosed land and the road, belongs,

becomes forthwith liable to be rated to that Parish next which it lies.*

It seems well not to dismiss this subject without remarking, that some further regulations might be most properly imposed, as conditions of the assent of Parliament to the enclosure of commons, and in order that the greatest amount of good, as well to the permanent (and not only the then living) commonalty of the place immediately concerned, as to the general public, may be secured as a consequence of the enclosure. It is an admitted constitutional principle that, without the express assent of Parliament, no folk-lands can be converted into book-lands. Formerly, the obligations of the *trinoda necessitas* (maintenance of roads, bridges, and defences) were an inseparable condition. These obligations have got to be evaded; but it must, only the more on that account, clearly be right that well-considered conditions, not interfering, of course, with any existing local rights or independence, should be laid down, as the terms of an assent which confers in itself a manifest benefit on those asking for it. It has been seen, already, that when Parish Vestries grant the enclosure, they usually attach the condition of a substantial contribution to the Common Stock.

Instead of any original suggestions being here offered, some shall be quoted which were put forth two hundred years ago, in a publication in which this subject is better treated than it has perhaps ever elsewhere been.

In 1652 was published, 'Common Good: or, the Improvement of Commons, Forrests, and Chases by Inclosure. Wherein the Advantage of the Poor, the Common Plenty of all, and the Increase and Preservation of Timber, with other things of Common Concernment, are considered. By S. T.' (Silvanus Taylor.) The author is a strong advocate for the enclosure of commons and waste lands, and for the disafforesting of the royal forests and chases. He is anxious that all this should be done

primâ facie, to the owner of the land, and not to the Lord of the Manor; so that the owner may usually enclose it, if he think it well to take upon himself the above obligations and liabilities. See *Steel v. Prickett*, 2 Starkie, 468, 469; *White v. Hill*, 6 Q. B. 487; *Doe v. Hampson*, 4 C. B. 267; and compare *R. v. Flecknow*, 1 Burrow 465, and before, p. 464 and *note*, as to cases where special circumstances free the encloser from the obligation to repair.

See further on the subject, the case of *R. v. Stoughton*, 1 Siderfin, 464, and more fully reported in 2 Saunders, 160; and Sir Edward Duncomb's case, Cro. Car. 366: also, after, p. 531 *note* *.

* 17 Geo. II. c. 37.

with the most careful regard to the interests of the poor in every place, and to the general interests of the State. To the latter end he has several propositions, as to the promotion of the growth of timber, etc., which need not be touched on. His propositions to the former end shall be glanced at.

He proposes that, in the case of *every* enclosure of common lands, one-fourth part should, before the allotment to those specially interested (and the increased value of whose interest, consequent upon the allotment, makes the proposition clearly a just one), be set apart for the good of the poor. This fourth part he proposes to apply in a manner which shows great discrimination and very enlightened views. Some of it he would appropriate as allotments to cottagers;—not in ownership, but as tenants, at a moderate rent, to the parish. The remainder of this fourth part, as well as the rents of these allotments, he would have “employed in raising work-houses”—not pauper prisons, but strictly *work-houses*,—“and stock to set the poor on work in those places most needful;” upon the principle, which he expressly asserts, that “he that will not work, let him not eat,” though the Poor-laws affirm the right of claim to parish aid. He puts this point well. He urges “the erecting of workhouses and setting up such a manufactory that may invite to labour, not by force; but, where you meet with resolute idle persons, *such* constrain to the mill, or some other hard labour; then, he that will not work, let him not eat: man’s nature is more easily drawn than driven.”

As to the remainder of the land, he proposes in the alternative,—either that a fourth part shall go to the lord of the manor, in lieu of all his rights, or that the whole shall go among the free- and copy-holders, they paying a small quit-rent on each acre. And he urges the latter mode as preferable, which it unquestionably is.*

But he adds certain conditions as indispensable in every case of enclosure. Among these, he would require that every twentieth acre be planted with wood; which he recommends, both for the beauty these “dainty scattered little groves” will give to the landscape, and for their national and individual advantage, in securing a constant and abundant supply of timber, and in affording shelter for cattle. He adds:—“Let the

* See 9 & 10 Vict. c. 70, s. 5; and, *directly contrary* in principle and effect, 12 & 13 Vict. c. 83, s. 5.

enclosers be enjoined to leave good large highways ; and, so left, to be by them maintained." This is in accordance with the ancient principle ; and would save Parishes the cost, often now very considerable, of repairing roads only brought into existence by the enclosure of lands which, as thus enclosed, give so great and unearned a benefit to the individual holders.*

The following very suggestive quotation is not the least remarkable part of this interesting publication.

"As for those large commons in Wales (and here may be taken in Yorkshire, Lancashire, and other of those northern counties that do abound with Commons and Ignorance), I desire it may be considered if not requisite to a quiet in Government, that learning be furthered ; and that, by dividing those large Commons into five equal parts ; and that one-fifth part thereof should be subdivided, the one moiety thereof to *maintain a Free School in every parish*, to teach the English letter ; . . . the other moiety of the fifth part may be well employed for the maintenance of a Latin Free School. . . . This little part of those vast Commons thus employed would not be lost, but found to be of great advantage to their posterity." Not the least advantage would be the sense of identification with, and indebtedness to, the *Institution of the Parish*, which would grow up in the mind of every one educated in such a school.† Very different, indeed, is such a proposal from modern doctrinaire notions of *National Education*. Our author adds the following words as to the value of these genuine Parish schools : two hundred years leave his language unimprovable, and as full of force as ever :—"I am sure the present constitution of schools is such as argues a deficiency in our Government ; and I judge the education of youth is more influential than judged by many pretenders to skill in civil government. There are notions of this subject which, if applied, after a few years, each of them may be of a more conservative nature to our home-peace than a thousand armed men."‡

* Section 9 of 17 & 18 Vict. c. 97, is a violation of the Common Law and of the plainest rightness. It is merely a cover, to enable Public Obligations to be evaded through Secret Influence. See p. 466 *note*. The ordinary Law of Highways can be the only right test in every case.

† See before, pp. 9, 10.

‡ See before, pp. 219, 337.

SECTION XI.

ENROLMENT.

VOTERS AND VOTING.

For any business to be rightly done, it is necessary to know who those are that have to do it. In nothing can this be more necessary than in the case of the Institution of the Parish. Very artificial methods have been adopted, of late years, for making some enrolments; such as those of Voters for Members of Parliament, for Town Councillors; etc. In dealing with the subject by Statute, no Principle has been adopted. On the contrary, all sound principle has been violated.

There is no such constitutional anomaly as a *rate-paying* test. It did not enter into the minds of our fathers to ordain that, because a man does not fulfil one duty, he shall be excused from the fulfilment of others. They held, on the contrary, the common-sense practical rule, that, every man being a member of the special community in which his lot is cast, he owes duties to that community, *all* of which he is bound to discharge; and which the community must see that he does discharge. Whether rate-paying should be one of these, is quite another question. It is clearly, however, an obligation which must *follow*, and not *lead*. Rate-books and rate-paying must, under a sound system, be one result, and not the foundation, of the Roll of Freemen, whether in dealing with Parish affairs, or for any other purpose.*

It is, in fact, the first duty of every Institution of Local Self-Government to keep its own Roll perfect. It is a mere badge of servitude for any Body of men to admit any one else, set over them by external authority, to determine who is, or who is not, of their number. This is a question that every man ought to feel as one affecting his own rights, independence, and responsibilities. It is a matter as to which no other tribunal ought to be submitted to, than the constitutional one of the judgment of peers. No "revising barrister," or any other,

* See before, p. 64.

ought to be let interfere, to adjudge that which must always be, and can only really be, within the cognizance of the freemen themselves. Thus, the first thing always required to be done, at those periodical inquiries which were formerly (and which ought still by law to be) held in every place, was, to have it ascertained whether the Roll was complete.*

The actual Common Law test of being a Parishioner, and being bound, therefore, as well as entitled, to be on the Roll, is—the being an Inhabitant. This has always been so. It forms the essence of all the Constitutional Local Courts and Institutions of every kind. Inhabitancy, not "ratepaying," is the only right test of the Parish Roll.

Nor must it be forgotten what "inhabitancy" means. It does not mean that the person is, through all day and night, on the spot. It means, the *having in occupation*, within a place. A man may have his house in one Parish, his fields in another. He thus *has in occupation*, however, within each, that which immediately affects him and his acts and thoughts. He is interested in the management and well-being of each. He is an "inhabitant" of each. As it was well expressed more than 250 years ago:—"Where he lies, sleeps, or eats, doth not make him a parishioner only; but, forasmuch as he *manures lands*" in another parish, "by that he is resident upon it," and "may come, if he will, to the assemblies of the Parishioners when they meet together."†

* See 'Articles of Inquiry,' already quoted, p. 367.

† Coke, 5 Reports, p. 67. See, also, the same point settled long before, in the Rolls of Parliament of 21 Edw. III., Petitiones No. 7; 21 and 22 Edw. III. Nos. 19, 26; 9 Henry IV. No. 53, etc. The point as to who is an "inhabitant" is one of so much practical importance, in consequence of the wording of many Acts of Parliament, that, while the case in Coke thus cited is sufficient to meet any Rate or Bye-Law, at Common Law, it will be useful to refer to some further authorities. All go upon the same principle, that an "occupier" is an "inhabitant" for all purposes except such as require absolute constant personal presence (as in *R. v. Adlard*, 4 B. & C. 779). See Coke 2 Inst. pp. 702, 703. Here the distinction of a "householder" is pointed out; a distinction which is important, as in some cases, such as a member of a Highway Board, the qualification of being a "householder" is essential. See further, *Leigh v. Chapman*, 2 Saunders, 423; *Woodward v. Makepeace*, 1 Salkeld, 164; *Atkins v. Davis*, Caldecott Sett. Cases, 315; *R. v. Poynder*, 1 B. & C. 178; *R. v. Hall*, 1 B. & C. 123. See also, Glanville's Reports of Cases in Parliament, pp. 18, 142. Compare *R. v. Pancras*, 1 A. and E. 80; *Fitch v. Fitch*, 2 Espinasse, 543; *R. v. Kensington*, 17 Law Jl. Q.B. 332; *Fearon v. Webb*, 14 Vesey, 13; and *Att. Genl. v. Parker*, 3 Atkyns, 577.

In the old records of Parishes, the entry runs usually in the name of "the inhabitants." There is conclusive proof that those who were called "villeins" took part in Parish affairs, as well as other persons. They did the same in all other Local Institutions.*

What follows from being one of the Body of a Parish is, the liability to two distinct things. And the fact of there being these two distinct things,—the liability to which has even become worked into a proverbial phrase,—proves the inapplicability of the "rate-paying" test. These two things are, *bearing lot* and *paying scot*. That is to say;—each inhabitant is bound to fulfil such personal duties, for and on behalf of the whole Body, as shall be *allotted* to him by that whole Body: he is *also* bound to pay his share of *scot* (shot) towards every general tax. The Offices already named illustrate the former of these liabilities. All Parish Rates (and not any one of these, in particular) illustrate the latter.†

It must always be the duty, in every place, of those who are entrusted by the parish with functions requiring a knowledge of all the inhabitants, to take right means to get that knowledge; to take care that none who really are inhabitants are let avoid their duties and responsibilities, as to either lot or scot.

When the Roll is thus kept perfect, it will be an easy thing,—but still a *consequence* of the inhabitancy, not a *test*,—to assess each for his quota of "scot," his contribution towards any rate or tax; whether made by the Parish on itself for its own general purposes, or required, by the general Legislature, to be contributed towards National purposes by the Parish, as one of the fourteen thousand similar bodies in the kingdom.

All the older records show this sound and practical course to

* See, for instance, *Inquisitiones Nonarum, Holcote, Co. Bedford*: 6 *parishioners* sworn, though it is expressly stated that the parish contains none except a few villeins. Compare with *St. Stephen's and St. Bartholomew's, Co. Hants (Suth')*; where no inhabitants. And see the introduction to the *Inquisitio Eliensis (Domesday Book)*; where six villeins from each parish are expressly named, as joining in making the return. And so, in the *Laws of Athelstan*, the "Bishops, Thaves, Counts, and *Villeins*," are stated to make the Law. 'Ancient Laws and Institutes,' vol. i. p. 216. See also before, pp. 36, 52.

† "By the Common Law, all the parishioners who pay scot and lot have a right to be of the Vestry." Lord Kenyon, in *Berry v. Banner*, 1 Peake, 161. See after, p. 477 note.

have been the one adopted. And, though common language in our day tends to obscure the subject, and the most vicious and unsound practice has been introduced in the making of other Rolls—such as those for Parliamentary and other elections—the Parish Roll still rests, for the most part, on the above principle.

The application of this principle, and no other, in carrying out the Statute of 43 Eliz. c. 2, has been often empirically taken, however, in modern times, as a foundation,—instead of as what it really is, an illustration. This is anomalous enough; for there were parish taxes made and levied often and long before that Act was passed. But the continually growing importance and difficulty as to the administration of the Poor Law, have been, no doubt, the cause why the tax made for that purpose became taken, in practice, as a sort of basis for common reference. And this, although that tax is a personal tax, while the Highway Rate is a tax on property. It is important, however, to the present point, to fix attention on the fact, that the words of this Statute of Elizabeth are, that the overseers shall ‘raise, weekly or otherwise, [the needed stock], by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, *in the said parish.*’

Reference to old Vestry Minutes shows that the Parish itself, by bye-laws, often forbids those who will not fulfil their obligations, either as to scot or lot, to enjoy corresponding benefits. Nothing can be more just. If a man, being an inhabitant, neglects to bear the lot or pay the scot, each of which is due from him in that character, he has no right to expect to be let enjoy any of the privileges which would otherwise belong to him as one of the community, and which arise out of the fact of being a member of a Political Community. Rights and obligations ought always to be felt to be *co-extensive*. This is too often forgotten. The selfish system of our time, begets and cherishes the forgetfulness of this first element to the sound existence of a State.

The Act of 58 Geo. III. cap. 69, appears to have been intended to do no more than give declaratory expression to the principle thus stated. But the attempt to express, by statute, what is plain and simple enough when left to the Common Law, very generally proves a failure. So it is here. It is

enacted that "*every inhabitant present, who shall*, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, etc., *shall be entitled*" to vote.

Thus was an apparent "rate-paying" *test* created; whence, misunderstood, much mischief and wrong have grown up. And hence the rate-book, and the rate-book alone,—and that, one rate-book out of the several different sorts there are in every Parish,—has become looked upon, but *erroneously*, as the Roll of the Parishioners. It is said *erroneously*; *first*, because even the above clause is *inclusive* only, not *exclusive* in its terms:—*second*, because no other rate-books are bound by the contents of this one, however much, as matter of convenience, one may be used to help in framing the others. It may happen, and does, in fact, often necessarily happen, that some assessments are omitted in the Poor-Rate Book which are included in the Highway-Rate Book. It is unquestionable that every inhabitant whose name is contained in the latter book, is entitled to vote on all matters under the Highway Act, and at all ordinary Vestries; and is, to all intents and purposes, a true Parishioner.* The same holds as to other rates.†

The hopelessness and failure of Statutory attempts at definitions, were illustrated in the case of the very clause just quoted. In the very next session of Parliament, its wording had to be "amended."‡ This amendment merely brought the Common Law somewhat more clearly out of the doubt that the Act of the previous year had thrown round it,—though it was free from doubt before that Act passed. The amendment explained, better, who an "inhabitant" is,—according to the long-settled Common Law, as already shown.

* So clearly, indeed, is this the case, that the Act 59 Geo. III. cap. 12, sec. 22, in giving power (contrary to the rule of the Common Law) to compounders of certain rates to Vote, in respect of the premises compounded for, "as inhabitants of the Parish," explicitly limits and confines this power to the occasions, *only*, of meetings "for the execution of the laws for the relief of the poor, or for the consideration of any matter or question in relation thereto." This fact is very noteworthy. This Act was passed the next year after the one above quoted. Though these persons vote in cases as to the Poor Laws, they do not become Parishioners, and cannot vote in cases as to Highways, or the Church, etc. See after, p. 480, and Chap. VIII. Sec. 4, as to compounding for rates.

† See the last two authorities cited in the *note* to p. 473: also the *note* on next page.

‡ 59 Geo. III. cap. 85.

The Statute of 58 Geo. III. has another section, which the attempt at definition made necessary. "When any person *shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof*, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same."* This section is clearly intended to bring the matter nearer to the Common Law simple test; to declare that, as soon as a man becomes an Inhabitant, he becomes a Parishioner for all purposes. It still leaves the matter very imperfect, however. It can only, by its own terms, apply to cases that have occurred *since the making* of the last Poor-rate. But cases are occurring every day, in which names were, either intentionally, or more commonly accidentally, omitted on the last Poor-rate, whose owners were, nevertheless, then inhabitants. If this section were all there was for it, such cases would be excluded; and it would do no more than open the door to a very easy and effectual way of fraudulently tampering with the votes. Happily, as usual, the Common Law comes to the rescue.

Five and thirty years after the passing of the last-named Act, another Act was passed, in order to remedy the consequences (long felt, but all this time unremedied) of another section in that Act, next following the one last quoted.† By the section in question it is enacted, that no one who shall have refused

* 58 Geo. III. c. 69, s. 4.

† Another strange blunder in the wording of this section (the fifth) was corrected by an Act of the next session, 59 Geo. III. cap. 85, sec 3, already named. It is certainly exceedingly instructive to note these numerous blunders (four have thus been enumerated in this one Act, on this one matter) in Acts which pretend, as this does, to regulate and settle things. It is the strongest comment on the folly of doctrinairism and empirical legislation. One thing is to be observed;—that, in all the sections of this Act, care seems to have been taken to make it only directory and *inclusive*—not *exclusive*;—to *avoid*, in fact, any exclusive words. It is a well-known rule of construction of Acts, that no man can be deprived of a franchise except by express words. "A Statute made in the affirmative, without any negative express or implied, doth not take away the Common law," Coke, 2 Inst. 200. *So far as it goes*, therefore, and in accordance with the Principles above explained, the Act is declaratory: but it cannot operate to *exclude* any "inhabitant" from voting in accordance with the obligations and rights which he has at Common Law. See before, p. 474 note †.

or neglected to pay any rate for the relief of the poor which shall be due from, *and shall have been demanded** of, him, shall be able to vote or be present in any Vestry of that parish. The intention of the section was perfectly sound and constitutional, as has been already shown. But, as worded, it only serves further to illustrate the imperfection and mischief of statutory attempts to define the Common Law. No length of time for the demand is limited. This gave a palpable means for defrauding men of their votes by trickery and surprise; as payment of a newly-made rate may be demanded of a man as he walks into the Vestry. A Bye-Law made by any place can be remedied by each place, so soon as any attempt to pervert it is seen. *Five and thirty years* have been necessary to remedy the obvious liability to perversion of the above section. By the 16 and 17 Vict. cap. 65, it was enacted that no person shall be required, in order to be present or vote at Vestry, to have paid,—that is, whether demanded or not,—any poor rate which shall have become due *within three calendar months* before such Vestry. This limitation is reasonable and proper.

Any man is, therefore, entitled to vote, who is a *bonâ fide* “inhabitant” of a parish, whether his name be in the rate-book or not. But, as it is the duty of those who make the rates, to assess every man, the different Rate-books—but not, necessarily, any particular one—in which these assessments are stated, will at all times represent, with few exceptions, the Roll of inhabitants.†

It has been already pointed out that such inhabitancy ought always to be one in fact, and in good faith, and not colourable merely. The Common Law provided for this, by the test of a year and day’s residence.‡ Unless a test of fact and good faith is thus applied, the door is again opened to fraudulent tampering with votes at elections and pollings, to an enormous extent, and far surpassing what have been already pointed out. It is easy, at a week’s or even a day’s notice, to manufacture any number of votes, by bringing up men who suddenly pretend to

* The importance of these words will be seen by reference to 5 & 6 Wm. IV. c. 76. s. 9. See *ex parte* Cooper, Q. B. 12 Nov. 1856.

† As to compounding for Rates, and what effect this has on Voting, see after, p. 480. The bearings of what is popularly known as Sturges Bourne’s Act have been already considered, pp. 62, 63.

‡ See before, pp. 63, 64.

have "become inhabitants since the making of the last rate," by the nominal occupation of a cottage, or a shed, or a corner of a field. As soon as the object of these manufactured votes is gained, the pretended new occupiers are heard of no more. But in the mean time, inasmuch as no rate can have been "demanded" of the new occupier, the above Act of 16 & 17 Vict. c. 65 does not apply, so as to exclude the colourable occupier in consequence of non-payment of rates. No Statute meets this fraud. Resort must be again had to the Common Law.

This is no imaginary mischief. It is a trick that is often resorted to on the occasion of sharply-run contests. It is one of the examples of the evils drawn in by the Polling system; for, when no Vote can be taken except at the open meeting of those met actually to deliberate, and there to determine, there is no after-time, giving the opportunity for such fraudulent manufacture of Votes.

The cure for such a mischief is, the application of the Common Law principle and test already explained. Much is to be done by the Parish Officers feeling a right sense of the importance and responsibility of maintaining the exactness of the Parish enrolment Books. Inasmuch as two people cannot be separately rated for the same house at the same time, if one is the known rate-payer, the fraud of any attempt to foist in other colourable occupiers of parts of the same premises, will be palpable, and the votes thus attempted to be manufactured must be at once rejected.*

More than all, let those concerned thoroughly understand

* A difficulty sometimes arises, under the 59 Geo. III. c. 85, s. 3, which states that, "where two or more of the *inhabitants present* shall be *jointly rated*, each of them shall be entitled to vote *according to the proportion* and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge." This is intended to apply to the plurality system; so that, if there are more than one votes, they may be divided among those jointly rated. But the voters must be, in any event, *bonâ fide* joint-tenants, or partners. A colourable joint rating of several for one small tenement will be a mere fraud; and it is the duty of the Parish Officers to ascertain who is, in each case, the *bonâ fide* responsible occupier, and to enter his name only on the rate-books. According to *R. v. Hall*, 1 B. and C. 123, and *R. v. Poynder*, *ib.* 178, each member of a *bonâ fide* partnership is liable to bear his *lot*, if the *firm* is put down as the occupier and charged with *scot*. It follows that each of such partners is, in every sense, an "inhabitant," and so has a vote. As in all other cases, the *bona fides* of the facts is the question in each instance.

the facts of the case. The spirit and principle of the Law, and the public opinion within every Parish, will then be the surest preventive to the attempt at such fraudulent tampering with votes.

It must be observed that, the right of voice and vote being inherent in every parishioner, although it is open to the Vestry to determine, on each occasion, the course it will take in Voting,* it cannot tie up the free action of the parishioners for future similar occasions.†

It will be necessary, when questions are put to the Vote, to bear in mind their subject; as those entitled to Vote will, in consequence of some modern enactments, which have introduced the highly unconstitutional system of *compounding* for a man's rights and liabilities, differ in different cases. On any question or election relating to the Church or the Officers connected with it, or any other Parish matter except the Poor and Highways, every "inhabitant," without exception, can always vote. In questions concerning Highways, some of the inhabitants may be deprived of their Common Law right to vote, as the rates of Houses under £6 a year rateable value may be compounded for. This only applies, however, if the Act has been formally "adopted" by the Vestry.‡ In questions concerning the Poor, the number of Voters may be still more cut down, as a power of compounding for houses of a certain description, and bearing a rental between £20 and £6 a year, is put in the hands of the Vestry.§ In this case, as in the last, the Act must have been formally "adopted" by the Vestry for it to be of force. No exclusion of inhabitants under this Act applies, however, to the case of Highways, or to any other matters of Parish business except those touching the Poor.||

It follows, clearly, that the Parish Officers ought to have, and keep regularly corrected, a Book with the name of every occupier in the Parish enrolled in it, as well as the Rate Books themselves; inasmuch as no one of the latter will (in case either of the above named Acts has been "adopted") correctly show

* See before, p. 59.

† See *Mawly v. Barbet*, 2 Espinasse, 689. Compare, for the principle involved, *R. v. Spencer*, 3 Burrow, 1827; *R. v. Head*, 4 *ib.* 2515; and before, p. 464 *note*.

‡ The Act is 13 & 14 Vict. c. 99. See after, Chap. VIII. Sec. 4.

§ 59 Geo. III. c. 12, s. 19. See, however, before, p. 476 *note*.

|| See p. 476 *note*. See, as to compounding for rates, Chap. VIII., Sec. 4.

who are those entitled to vote on the different questions and elections that must arise.*

It has been already seen that the Churchwardens are the returning officers. It is their duty to take care that every election, and every occasion of voting, is properly conducted and effectually carried out.† They should take care, whatever the question may be, that it is clearly and truly before the mind of every voter, and that there is no danger of misapprehension, as to either the thing to be voted on or the time and place of voting.

One very common mode of meeting a resolution, is by moving "the previous question." But it is surprising how few persons know what this motion means, and what are its consequences. "The previous question" means, that, instead of the resolution itself which has been moved, or any amendment thereto, being put to the meeting, the question shall first, and at once, be put, whether or not the proposed Resolution shall be even now put to the vote at all. The person who moves "the previous question" really votes against what would ordinarily seem his own motion: that is, he and his followers vote *against* the previous question; they vote that "the resolution shall *not* be now put." If this *negative* vote is carried—if the "NOES" are highest on "the previous question"—the original resolution falls to the ground. But if the "AYES" have it, the original resolution must be at once put. There cannot, after the previous question has been put, be any further debate, nor any adjournment; and no amendment whatever to the original resolution can be put. It is the simple *aye* or *no* upon the resolution itself, which must be separately and substantively put to the Vote. The vote upon "the previous question" is, in

* See Ex parte Joyce, 23 L. J., M. C. 153, for an example of the confusion that sometimes arises, through the irregularities in voting that are liable to spring out of these departures from the plain and simple principle of the Common Law.

† See before, p. 258, and the case there cited, as to Voting for Committees by *lists*. As to Voting for a single officer or servant, where there is a competition between several, the very judicious course of reducing the number of candidates, by striking off the lowest on each of an equivalent number of successive votes, till the number is reduced to two, and then taking a final vote between these two, is unquestionably the best. (See Ex parte Le Cren, 2 D. and L. 571). Though no Vestry is bound to adopt this course, its obvious fairness recommends it to general adoption.

fact, the passing of a Bye-Law that a certain specific resolution shall or shall not be then put to the Vote.

If another amendment has been moved before "the previous question," that amendment must be disposed of before "the previous question" can be put. If the amendment is carried, "the previous question" must either be withdrawn, or it will apply to the amended resolution instead of the original one. After "the previous question" has been proposed, no one can propose any amendment, unless the demand of a vote on the previous question is withdrawn. A motion for adjournment may, however, be made at any time; and this must be settled even before "the previous question," as it is the right of every meeting to secure to itself the full opportunity for discussion;*—and the motion for "the previous question," necessarily embraces the whole subject, as it involves the full consideration and discussion of the propriety of putting the original Resolution, or refusing to let it be put at all.

It must be remembered that there can never be an *amendment upon an amendment* before a meeting, at the same time. Else, business could never go on. One, two, or more amendments to an *original* resolution may be proposed; each of which, unless superseded (as such an amendment always will be) by its inconsistency with one already adopted, will be put to the vote and disposed of in the order in which it is proposed. When an "amendment" is carried, the resolution, *as thus amended*, must afterwards be put to the Vote as the actual resolution; and upon this, thus put, any amendment (*not being inconsistent with the amendment already accepted*), or "the previous question" itself, can be proposed. A man may honestly prefer one form of Resolution to another, and therefore vote for it; though he would rather have none at all, and so proposes, at last, "the previous question."

The demand of a vote on the *previous question*, is thus, in fact, calling for a vote on the applicability of the Principle involved in the Resolution itself which is actually before the meeting. It is oftentimes the most convenient way of bringing the true question to issue. But its nature should be made thoroughly understood.†

It will always be a convenient, and it is a very inexpensive,

* See before, pp. 56, 57.

† See, generally, as to the duties of *Chairman*, before, pp. 58-60.

course, in case a Poll takes place, to have the Resolution itself, with a notice of the arrangements for Voting, together with a Voting card, printed, and sent round to every occupier.* No one can thus plead ignorance either of the subject or the opportunity. The delivery, at the time of Polling, of the Voting cards, will form an important check upon the correctness of the Poll Book itself. If any person happens to forget his voting card, one should be filled up for him on the spot. All the cards with "aye" should be put in one basket: all with "no" in another. At the end of the poll, or of each day's poll if it last more than one day, the cards in each basket should be

* In the hope that it may be found a practical help to those who seek to promote sound Parish action, I subjoin *forms* for this notice of Poll and card. To illustrate the matter, *the previous question* is here taken as the amendment.

(1.) Form of Notice of Poll.

"PARISH OF LITTLETON.

NOTICE OF POLL.

Whereas, at a Vestry Meeting holden in Littleton Church, on Thursday, the 28th day of May, 1857,

It was moved by Mr. William Jones and seconded by Mr. Laurence,

"That the Small Tenements Rating Act (13 & 14 Vict. c. 99) be adopted within this Parish."

Whereupon Mr. Simson moved and Mr. Williams seconded,

"THE PREVIOUS QUESTION" (that is to say, that, instead of putting the Resolution or any Amendment thereto to the Vote, the question should first be put to the Vote, whether or not the proposed Resolution shall be even put to the Vote at all).

Whereupon, the question having been accordingly put to the Vote, by show of hands, "That the Resolution be now put," this was declared lost by a majority.

Whereupon Mr. William Jones, as the mover of the original Resolution, demanded a Poll, and asked us, the Churchwardens of the Parish of Littleton, to declare and give Notice of the days and times thereof.

Whereupon it was resolved, at the said Vestry, and we the Churchwardens did then declare and give Notice, That the Poll of the Parishioners, on the above question, will be taken in the Vestry of Littleton Church,

On Monday, the 1st day of June, 1857, between the hours of 10 A.M. and 4 P.M.;

On Tuesday, the 2nd day of June, 1857, between the same hours;

And on Wednesday, the 3rd day of June, 1857, between the same hours.

On which last-named day and hour the said Poll will close.

And thereupon it was unanimously resolved, That the said Vestry should, at its rising on the said 28th day of May, adjourn to the said Monday, the 1st day of June next, at Littleton Church aforesaid, at 10 o'clock in the

counted, and their number be compared with that recorded in the Poll Book. In the latter, every name must be entered, as the vote is tendered. There must be two columns on each page, besides the name column; one for the *ayes* and another for the *noes*: or, what is still more convenient, all the *ayes* should be inserted on the left-hand page, and all the *noes* on

forenoon, and thence be continued from day to day, from, at, and to the days and times aforesaid, for the purpose of taking the said Poll;¹ and that, at the day and time last above named, the said Vestry should stand adjourned to Thursday, the 4th day of June, at 6 o'clock in the evening, in Littleton Church aforesaid, to receive the declaration of the result of the said Poll, and to dispatch such other business as may then arise.

Now therefore we, the Churchwardens aforesaid, do hereby give Notice, that every Parishioner must attend, *in person*, on one of the three days, and between the hours, aforesaid, to record his Vote, either for or against the said question, namely:—“*Whether the Resolution for adopting the Small Tenements Rating Act shall be put or not?*” and that the result of the Poll will be declared at the said adjourned Vestry to be holden on the 4th day of June next.

SAMUEL LEWIS, } Churchwardens.
JOHN KENRICK, }

N.B. For the convenience of the Parishioners, a card is sent to every Ratepayer, on which is written his name, and number as it stands in the Rate-Book. It is requested that this card may be handed in at the Poll, with the Vote “Aye” or “No” plainly written thereupon. This arrangement will be a great saving of time to every Ratepayer, and prevent the liability to any mistake.”

(2.) Form of Card.

“PARISH OF LITTLETON.

1st, 2nd and 3rd of June, 1857.

Poll on the question of putting to the Vestry the Resolution for adopting the Small Tenements Rating Act within this Parish.

Name: Mr. _____

No. in Highway Rate-Book² _____

If the Voter think the Resolution for adopting the Act }
ought to be put, let him write, plainly, ‘AYE’ . }

If the Voter think the Resolution for adopting the Act }
ought not to be put, let him write, plainly, ‘No’ }

N.B. No one can Vote by Proxy.”

¹ See before, pp. 56, 57, that the taking a delayed Poll is thus done by adjournments.

² All who pay the Highway Rate will Vote in such a case as this. These will, until this Act is adopted, be every inhabitant; and so that rate Book will be a complete Roll. See before, p. 480.

the right-hand page. This course will prevent confusion, and much lessen the risk of error.*

The Poll must always be kept open for a time sufficiently long, to give every one entitled to vote a reasonable opportunity for doing so. If this is not heeded, the whole proceeding will be void.† On a day fixed in the first instance, the churchwardens must declare the Poll.

There should always be one person or more, appointed by each side, present at the giving in of the Votes; so as to watch the correctness of the entry of every voter's name and vote, and that none votes twice either way. The same course should be taken at the scrutiny of the Votes. In declaring the Poll, though it may be a case where Sturges Bourne's Act must (at present) be applied, the number of *persons Voting* should always be declared, as well as the number of actual votes.

What has been thus said, applies to the case where a Poll is demanded. The taking the Vote by *show of hands*, or by *division* on the spot, has been already treated of.‡ But, whether the question be put to vote by show of hands, division, or poll, the correctness of the Books of Enrolment will be equally necessary; and it will be equally necessary that the Parish Officers take care that those only vote, or have their votes reckoned, who are, upon the face of the Books of Enrolment, entitled to vote on the matter that happens to come in question.§

* If the votes are taken on the plurality system (*i. e.* under Sturges Bourne's Act) there must be an additional column, in which to put down the number of votes which each voter has. These need not be put down at the moment, but can be filled in afterwards by aid of the Rate Book.

† See hereon, *R. v. Winchester*, 7 East, 573.

‡ See before, p. 62. At p. 57, and in the various other places where special subjects are treated of, it is shown when and where the vicious plurality of voting system under Sturges Bourne's Act is, or is not, obliged (as the law now stands) to be used.

§ See before, p. 480.

SECTION XII.

PARISH RECORDS.

CUSTOMS, USAGES, AND ACTION, IN DIFFERENT PARISHES.

THE sound custom has, from the earliest times, marked all the Local Institutions of England, that Records should be kept of their proceedings. This is characteristic of a sober and earnest people; conscious that, when gatherings of men take place, they should not be mere empty displays, without meaning, substance, or either legislative or executive capacity; but that they ought to be always for a real purpose; that what they have met for, should be done in a business-like manner; and that a record should be handed down of what has thus been done,—as the work of men who mean what they do, and wish its meaning understood and consistently carried out.

These records are of an unspeakable value. It is they alone that give us a thorough insight into the inner life and true habits of being of the people. Compiled histories may lie:—actual local records tell us unvarnished truth;—in an “abstract and brief chronicle,” indeed; but the comparison of such chronicles unfolds the most veritable insight into the reality of the action of Institutions.

It is the happiness of England, the badge of her long-enduring free state, to be richer in such records than any other nation in the world; to possess these records for a longer time back, in a better state of preservation, and in a greater variety, than any other country. Domesday Book,—so often misrepresented, by those who have never studied it,—is, in fact, nothing more nor less than a record of the action of the Institutions of Local Self-Government of a free people, in almost every county in England. It brings up a vivid picture, full of life and interest, of how men in England did their own business for themselves eight hundred years ago. A vast number of other illustrations might be named; but it concerns the present purpose to touch on those only which relate to Parishes.

The Record called "*Inquisitiones Nonarum*,"* is itself more than five hundred years old. It contains the transactions of the parishes in the different counties of England, in a matter of taxation, which immediately concerned them in their relations to the State. It must thus be distinguished from records concerning other transactions of Parishes, and in their other relations. For instance, there are the records of the sheriffs' Tourn, which concern the Parish in its relations to the County; and the records of the Leet, which draw the circle within the more immediate range of the primary Institution of Self-Government.† But these latter, again, both refer specially to the administration of justice. The records of the deliberative and legislative meetings of the men in Parishes, are, necessarily, of a different character from any of the preceding. Such are the records of the Vestry Meetings, and the books of Parish Officers and Committees.

Records of the Vestry Meetings, and of the accounts of Officers, have been kept from remote antiquity. In many parishes such records still exist, going some centuries back. No notion can be more erroneous than that the keeping of Vestry Minutes depends upon any Statute. It depends solely on the custom of England, for ages past, in all such Institutions. It is true that an Act, already quoted, embodies the requisition to keep such minutes.‡ But this, like all other parts of that Act which are not unsound innovations, is merely declaratory of the already existing Common Law and universal custom.§ There is probably not a parish in England, certainly none of the least importance, which does not possess regularly-kept records from a time very long before that Statute. This fact is recognized in the Act itself, in the section which enumerates the parish papers. This section declares the Common Law principle, that these older records shall be held in custody by whomever the Vestry appoints for that purpose.||

* See before, pp. 26, 28, 53, 69, 81, 230, 322, 368.

† See 'Local Self-Government,' pp. 352-354.

‡ 53 Geo. III. c. 69. See secs. 2 and 6.

§ See p. 351 note.

|| The following are the words of the two sections in question. Section 2 declares that "Minutes of the *proceedings and resolutions* of every vestry, shall be fairly and distinctly entered in a book, to be provided for that purpose by the churchwardens and overseers of the poor; and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same." Section 6 declares, "That as well the books

Every parishioner has a right to inspect the Parish Books at all reasonable times. These books are kept for the use and information of all; though, for actual keeping, they must be put in the immediate possession of such person as the Vestry thinks fit. If no one is specially appointed, the respective officers will keep the Books belonging to their departments, while the Churchwardens will have custody of the Minute Books. All the rate books and books of account, of foregone years, should be kept in the Parish Chest, as well as all documents of every kind relating to the proceedings or interests of the Parish.*

It is usual, and a good practice, to enter the names of several of the parishioners present, at the head of the minutes of each Vestry Meeting.† They thus stand recorded as witnesses to the truth of the Minutes. Not only should entry be made in the Minutes, of all resolutions passed, but also of all Reports made, documents received, memoranda of proceedings, and—what is often of as much importance as the resolutions passed—amendments proposed and lost. It should be a true record, not only of the *Results* of discussion, but of all the *Proceedings* which have taken a definite shape.

Those who would understand thoroughly the nature of the Institution of the Parish, whether as matter of History, or of

hereby directed to be provided and kept for the entry of the proceedings of vestries, as *all former vestry books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers*; and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials [which are kept by the minister who makes them], shall be *kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct.*" This is expressly saved untouched by 2 & 3 Vict. c. 84, s. 3. Provision follows, imposing penalties for destroying, obliterating, or injuring any such books or papers, or neglecting to deliver them to the order of Vestry;—the old Common Law remedies in like case being, at the same time, carefully preserved.

* As to enforcing the production of these, see Anonymous case, 2 Chitty, 290; R. v. Eaton, 10 Jurist, 222.

† As to the entry of the Vestry Minutes, see before, pp. 58, 59 note. It must be understood that those signing the Minutes, do not thereby make themselves personally liable on account of anything done by any order of Vestry so signed, nor unless they sign an express guarantee. See Lanchester v. Tucker, 1 Bing. 201; Lanchester v. Frewer, 2 Bing. 361; Sprott v. Powell, 3 Bing. 478.

Practical Precedent as regards proceedings, must study some of these Records. In these will be seen the very life of England. It will be seen that, while Political faction has raged the hottest,—and while even crowns and kings have been made and unmade,—the people of England have gone on in the course of their old Institutions of Local Self-Government, with the same earnest determination to do for themselves what concerned themselves. It is our own time only that has witnessed the degeneracy of the public spirit thus kept up through so many ages. Selfishness and subserviency were always twin brothers.*

It is, therefore, peculiarly appropriate to the scope and object of this work, as a practical help to all Parishioners, that illustrations of the Records of Parishes should be here given. Some extracts of this kind have been already given, to illustrate certain points of importance.† What shall now be given will take a wider range.

A glance shall be first taken at the contents of the *Inquisitiones Nonarum*. Then shall follow selected extracts from the Minute Books and Items of Account, of Parishes in different parts of the country. And here the difficulty lies in the selection. Space, not material, must limit it.‡ What are given will, at any rate, be sufficient to illustrate the action of the Parish in a great variety of matters; and thus convey the clearest practical idea of what may be done, and the way of doing it, on similar emergencies, in any parish.

A careful perusal of the *Inquisitiones Nonarum*, illustrates matters of such interest as the following,—the practical bearing of which has been already shown in this volume:—

That those who made the special inquiries and returns, were chosen, by the Parish, as Committees for the purpose.

That the minister had no part in the business; while, at the same time, the parishioners, whenever necessary (and this was very often), made returns as to the minister's income and emoluments.

* See before, pp. 5-8, and *note*; and Chap. III. Sect. 15.

† See, on Churchwardens' Payments, pp. 98, 235; on Auditing Accounts, p. 184; on the Vestry Clerk's Office and Duties, pp. 204, 206, 207, and 209; on Parish Committees, pp. 235, 236; on Trustees and their Duties, p. 286; on keeping Parish Minute Books, p. 328; and other places.

‡ I take this opportunity of stating, that I shall be greatly obliged to any Parish Officers or others who will communicate to me copies of any special entries in any Parish Minute Books or Accounts, or afford the opportunity for an inspection of such Books.

That personal property, of different classes, was all equally liable to direct taxation ;—the merchant being as fully included in the tax as the farmer.

That the whole was simply a secular affair ; and, whether or not the church of the Parish happened to be assessed for any ecclesiastical purposes, the Parish taxed itself, separately, for secular purposes.*

That many Divisions of Parishes thus early existed, which assessed themselves separately.

That the returns of townships were revised and confirmed by Parishes, before being sent up ; and those of Parishes by Hundreds.†

That each place pursued its own independent course, without the application of any dictated or procrustean rule ; the modes and forms of return differing in different counties, and generally also in the different hundreds of the same county ; though the result, in reference to maintaining the necessary relations and responsibilities of the Parish to the State, comes out the same in each.

That the name of the Saint to whom the Parish Church happens (if dedicated at all‡) to be dedicated, has nothing whatever to do with the name of the Parish itself ; and that it is a mere blunder, the growth of modern times, to put Saints' names as part of the designation of Parishes. These form no part of the names of Parishes, and never ought to be thus used.§

* See the Hundreds of Mannesheved, etc., in the county of Bedford. But the assessments for ecclesiastical purposes were also made by the Parishes themselves. "Pope Nicholas's Taxation" is merely a *title*, not the statement of a *fact* ; any more than a "Statute of Victoria" means one made of the Queen's *mero motu*.

† Out of a vast multitude of illustrations of this, I take the following as one of the most compact. "Nomina sex hominum cujuslibet villæ hundred' de Rys', jur' *ad informand' et certificand'* xxiiij homines, inquisitores de vero valore, etc." (Hundred of Rysebreg in Suffolk). In this case, the Hundred jury or committee was twenty-four, the parish juries six each. But these numbers vary in other cases. In some Parishes, in some counties, there are only four committeemen. In very many cases, every separate parish has a jury of twelve : while in some hundreds the appellant jury (as it may be properly called) of the larger jurisdiction has more than twenty-four ;—in some, less than twenty-four. See before, pp. 17, 36, etc., as to the system of this appellant jury,—of which the above is but one illustration.

‡ See before, pp. 42 *note* *, 444 *note* ¹, and after, p. 493 *note*.

§ See before, pp. 26, 27.

That, though a basis, taken from former returns for another purpose, was assessed by the Treasury upon certain persons, held responsible in each parish,—this assessment was merely by way of *estimate*, and was entirely subject to the special revision, re-assessment, and return, of the parishioners themselves, in every case.*

Numerous facts of interest are incidentally recorded, connected with the history of parishes in many parts; the climate, productions, population, etc. These are stated in reference to the reasons why the amount of assessment returned, is higher or lower, as the case may be, than former returns.

The prices of corn, and many other particulars of like value, are found.

Estimates occur of the value which land, then uncultivated, would have, if the same were cultivated; a particular of obvious interest, both absolute and relative.

So much, in a few words, for the valuable Parish record of the *Inquisitiones Nonarum*.

The old records of ancient boroughs show how completely the condition, even of a Borough, was but a mere larger growth emerging from the Parish.† The churchwardens will be found to have been always formerly, in some until very lately, chosen at the same meeting at which the other borough officers were chosen. It will be found, too, that both were then always, as they still ought always to be, chosen by the parishioners.

Illustrations shall now be given from the records of individual Parishes, in different parts of the country.

The Parish of Steeple Ashton, in Wiltshire, has preserved its Minute Book of Vestries, and many of its accounts, during a long and interesting period.‡ Through all the times when the Reformation was heaving and throeing in men's minds; and through all those further times when civil war raged through the land, and King, Commonwealth, Protector, and Restoration, succeeded one another; we here get veritable glimpses of

* The Essex returns afford a good illustration of this important point.

† The original records of the Borough of Stafford give a good example of this. Those of Kingston-on-Thames may also be named.

‡ I am indebted to the obliging courtesy of the Vicar of Steeple Ashton, the Rev. Richard Crawley, Prebend of Salisbury, for the opportunity of examining this interesting record. It has been already referred to, before, p. 433.

what the parishioners of Steeple Ashton did, nevertheless, about their own business.*

The earliest entry in this Record is of the date of 1542. It is interesting, both as showing the immediate and essential part always taken in their affairs by the whole parish, and as illustrating, incidentally, the gorgeous manner in which the senses were appealed to, even in country places like this, in the services of the Roman Catholic Church. It has been already stated that all the priests' robes and vestments are the property of the parish, not of the priest or minister. The Churchwardens hold them on behalf of the Parish, and are responsible for them. Hence these are included in the following inventory.

“Mem^m. The 26th day of December, and in the 34th year of the reign of King Henry 8th, by the Grace of God of England, France, and Ireland King, Defender of the Faith, and in earth, next and immediately under God, of the Church of England and also of Ireland supreme Head. A perfect and a true inventory taken and made, by the consent of the whole parish of Steeple Ashton, of all and singular goods, jewels, and implements belonging or being within the parish church aforesaid, and delivered into the custody of William Stilman and Robert White, being churchwardens,—as hereafter followeth:—

Imprimis, one chalice parcel gilt, containing 18 ounces.

Item, one pair of vestments of blue velvet, and a cope, with albs and ames [parts of the priest's dress] to the same.

Item, of blue satin of Bridggis, 1 cope.

Item, of red velvet, one pair of vestments.

Item, of red velvet, one cope, with alb and ames to the same.

Item, of green velvet, one pair of vestments, with albs and ames to the same.

Item, of white damask, one pair of vestments, with albs and ames.

Item, of black silk, one whole suit of vestments, with a cope.

Item, of sad white silk, one whole suit of vestments, with a cope.

Item, of purple silk, one cope.

Item, of green silk, one cope.

Item, three corporas cases [covers for the communion table] of silk, and one of them embroidered with gold.

Item, of green silk, a sepulchre cloth.

Item, of sad silk, one altar cloth.

Item, for corporases, six kerchiefs.

Item, in the tower there be 5 great bells and one small bell, and a clock.†

* I have not uniformly kept to the old spelling in these extracts;—only, indeed, where it seemed particularly characteristic. In the complete extract printed in Appendix B, it was characteristic to give the whole as exact as a carefully made copy could secure it.

† The value and nature of the “properties” belonging to Parishes, and

The churchwardens make, yearly, an account ; which runs, for several years, in the following form ;—occasional variations from the one first entered being here put between brackets :—

in no slight degree the religious habits of our forefathers, will be further illustrated by the following inventories of the same sort of articles belonging to other parishes, all of them rural ones :—

The following is an inventory, translated from the original, of so remote a date as 1252, of the parish of Chiswick (Middlesex). Compare with it, that of Welwyne on pp. 494, 495.

“A good and sufficient missal, sent from the treasury at St. Paul’s. *It.*—Two sufficient gradales [books so called]. A tropery [another book] in good condition, except that it wants binding. An old legend [book of lessons], with masses inserted in various places, for the use of the monks. An antiphoner [book of anthems] in good condition, with the notes properly marked. A good and sufficient psalter. *Item.*—There is no manual. *It.*—A silver chalice, small, and of little value. A chesible [kind of cope] of red velvet, with a handsome orfray [fringe of gold]. A cope, entire and well ornamented. Another cope, with a white chesible, thin and torn. Two maniples, and a stole. Three corporases. Five consecrated altar cloths in good condition ; one of them ornamented with silk. A silk cloth of arest [? Arras], in good condition, given to the church by one of the parishioners. An old chrismatory [vessel for consecrated oil]. A good and sufficient banner. *Item.*—There is no pix wherein to place the consecrated host. *It.*—Two brass candlesticks, and two of tin, and four tin vials. * * * *It.*—*The church has not been dedicated.*” On the last point, see before, pp. 26, 42 note *, 444 note ¹.

There is another inventory of the same parish, of the date of 1458, in which are, among other things, contained “two paintings representing the last judgment, and the five joys of the Virgin Mary ; a vest of green silk, with flowers of gold, and white birds ; another vest of red silk, with golden lions ; a third vest of red bawdekyn [rich silk], with flowers of gold ; a vest of black satin, having orfrays of green silk, with white lilies ; a green vest of broad alysaunder, with white roses ; and two frontals” [cloths to hang under tapers]. (See Lysons’ ‘Environs of London,’ 4to, 1810. Vol. ii., usually bound as vol. iii., pp. 140, 141.)

An inventory of Chelsea (Middlesex), taken 1552, contains the following :—“Chalices, pattens, crosses of copper gylte, autler clothes, candelstycks of latten, corporas cases of red velvet and tynsell, a lyttel maser, qweshions of tynsel and of sylk, vestments of black velvet and of sattin, with velvet crosses, velvet copes, sylke curteyns, and canopies, a hearse clothe of tynsel, sylke, and velvet, another of red sylk and gold, a censor of latten, a holy-water stocke, a payre of orgayns, two hand-bells, and a sackaringe bell.” In one chapel are stated to be “an autler clothe, of Brydges satten, with a border to the same, and two corteynes of sylk belonging to the same.” And it is stated that there had been stolen a “hearse clothe of blewe vellett, with a cross of redd vellett, and branched with golde, and one coope of caddas.” (Lysons, vol. iii. pp. 86, 87.)

The following very complete inventory shows how fully supplied these country Parishes were, with all the appliances of a rich and varied cere-

"*Steeple Ashton*.—Mem^m. That we the foresaid churchwardens, William Stilman and Robert White, have made [and gathered], of the devotion of the whole parish, in keeping of *Ales*, for the church use [and profit], and other duties pertaining thereunto, which we reckoned for the same year, £8 18 2

"That we the said churchwardens, William Stilman and Robert White, have paid out of the foresaid sum, for reparations about the church, at visita-

monial service. It is from Chauncy's 'Hertfordshire': Welwyne, in the Hundred of Bradewater. I have corrected a few obvious errors of the copyist.

"The Inventorie remembring all suche stuffe as belongyte and perteynith to the Paroche Cheurche of Welwyne, tayn before Thomas Cordal, Parson of the same, Robert Bordall and John Culwick, Cheurchwardens, the fyrst day of Februarie in the yeare of our Lord God, A. MCCCCXLI.

Imprimis, two chalices of Silver; t'one [the one] double gylt, and the other percell gylt.

Item, a croosse w^t Seint Mary and John, w^t the foote to the same belonging, of coper and gylt.

Item, ii pippis of the same metall gyltid, to put upon the crosse staffe.

Item, a croosse clothe of grene silke, staynyd with the Image of the Trinite.

Item, one other croosse clothe of satyne for every day, an old croosse cloth of buckeram staynid, and the croosse staiff.

Item, a purse of silke: w^t yn ys a box of Iverie garnysshed w^t silver, to bere the blissid Sacrament in visitacions to syke folke.

Item, iii corporascasys w^t iii corporas clothis.

Item, on boxe of woode: within lyithe iii Lawnnys of netill clothe.

Item, on Sacrament clothe of bright violet silke, for the Sacrament every day.

Item, on oulde Coushyn of silke.

Vestiments.

Imprimis, on Vestiment w^t amyse and Albe, stoole, Fannon, and Parrells of Sattyne of Briggeis, violet or Blew colour.

Item, another Vestiment w^t the Albe, stoole, Fannon, and parrells of branchyd dammaske, broone or russet colour, embrodyd w^t flowers of Venyse golde.

Item, an other Vestiment w^t the Albe, stoole, Fannon, and parrells of blew silke, sparkelyd w^t flowers or beests of venice gold, callyd the Requiem Vestiment.

Item, another Vestiment w^t the Albe, stoole, Fannon, and parrells of branchyd damaske, lyght grene, for Sommer.

Item, on other Vestiment w^t the Albe, Stole, Fannon, and the apparrells of wyght fusthian, embrodyd flowers of cooper golde.

Item, on other Vestiment w^t the Albe, Stole, Fannon, and parrells of silke, darke grene, callyd clothe of Bawde Kyne.

Item, on other of olde velveyt tawne, embrordyd with sterrys of Venice gilde, w^t the Albe, Stolen, Fannon, and parrells.

Item, on Tunackyll for the decon, of Broonde silke, Redde, callyd clothe of Bawde kyne, with the Albe, stole, Fannon, and parrells.

Item, on other old suspendid Tunackyll for the prest, w^t an Albe, stole, Fannon, lackyng the rest.

Item, on other olde Tunnackyll, lackyng all.

tions, and for the archdeacon's duty, with *other* costs and charges that we have been at for this same year £5 12 9

“On the feast of Saint Stephen, and in the 34th year of the reign of King Henry the 8th, by the grace of God of England, France, and Ireland King, Defender of the Faith, and in earth of the Church of England and also of

Item, an herse Clothe of blew silke, sperkillyd w^t Lyons wevyd in, of Venice golde.

Item, on other herse clothe of course blaake wullyn, w^t a crosse of wyght lynyn clothe uppon it.

Books.

Item, on gret Antiphon of Velhin [vellum], wryten and notyd. *Item*, another smaller, in two parts, of the gyft of Will. Cordall of London. Two graylls of Velhin, wryten and notyd. On prentit legent, of papyr.

Item, a nother Antyphon of Velhin, wryten and notyd; ii Salters of Velhin, wryten; iii processioners of papyr, and ii of Velhin, wryten and notyd.

Item, ii prynt Masbooks, on new, the other olde.

Item, on masbooke of Velhin, wryten; ii hymmes pryntid; and ii other of Velhin, wryten.

Item, one Lattyne [brass] baasyn and a eware; iii pykyd candlesticke w^t a nosell; ii sensours of Lattyne; on lytle baasyn of cooper for frankynsence; one lawmpe.

Surpluss:—*Item*, one Surplesse with slevys, and other ix without slevys, good and baad.

Item, an olde peynted clothe, lyke dammaske wurke; a Vayle for lent; iiii boerds, and iiii trestills; a Basket for hollywydbred; on holywater stoop of Lattyne.

Hygh Aulter:—*Imprimis*, v alter clothys of lynine; on canvas clothe to cover the alter clothis; an alter clothe to hang fore the aulter, of sattyne of Bryggs, pantyd Blue and red; vi towells; ii pare of candlesticks for taappers, of Lattyne; an olde payntid clothe to hang before the alter, for every day; ii great standard candelsticks of Lattyne; iii paxis.

Item, iiii peyntid clothis for the sepulcher; a payntyd clothe or canoppye for the Sacrament; and iiii stayfs, vi Bannars clothes, ii Stremers paynted.

Saint Nicholate Aulter:—*Imprimis*, ii Aulter clothis halowyd; on canvase clothe; and ii old payntid clothis to hang afore the same alter.

The other Aulter:—*Item*, one alter clothe of Lynine; a canvase clothe; and ii old payntid clothis to hang afore the same altar.

Cooppys:—*Item*, ii cooppys [copes]; the on of blue velvyet w^t the parrell of Imagery, embroderyd w^t Venyce golde, and the body of the same w^t flowers of lyke golde.

Item, on sheyt to ley the same yn. The other Coope of grene silke, callyd clothe of Bawdekyn, for every day.”

There are many inventories in the Steeple Ashton records, besides the one quoted above. Some of them are quaint enough, enumerating such things as:—1589. “Roger Martin hath an holie water potte and a brasen

Ireland supreme head. The church reckoning made [in the presence of all the whole parish] by William Stilman and Robert White, Churchwardens, for all manner of payments and receipts belonging unto the church of Steeple Ashton. All manner of payments allowed [and thereby discharged]; and so remaineth [clearly in the hands of ——— and ———, churchwardens for this year] £3 5 5

The accounts are, in many years, given at full length; but it appears, by several express entries, that the custom was, to bring in these accounts on separate sheets of paper, and put the latter on a file. They were entered in the Minute Book in special cases only.

This record gives a good deal of illustration of what has been already stated as to the management, by the Vestry and Parish Officers, of Parish Estates; and as to self-taxation.

In order to understand the above extracts, as well as many of the entries found in this record, and in others that will be quoted, attention must be recalled to the fact, that the holding public festivals and games was formerly identified with every Parish.* In most parishes, a House was formerly held by the Parish, usually called the "Church-House."† In and round

staffe. Antony Griffin hath a cupboarde. Robert Hancock hath a table." An inventory of 1637 contains:—"Imprimis.—Tenn bands [bonds] for £47. [See before, p. 433.] Item.—The writings [deeds] for the Church House. Item.—One silver chalice, with a keever [cover] and case. Item.—4 pewter flaggons. Item.—One little pewter platter. Item.—2 surplises. Item.—One carpet for the communion table. Item.—2 little pewter dishes. Item.—2 chestes. Item.—2 longe barres and short barres ['about 43 pounds weyght,' according to entry of 1636]. Item.—One longe ladder," etc. etc. See further, pp. 517, 522, 523.

* See before, p. 249.

† I find it called the "Parish-House" in some cases. The name "Church-House" was, no doubt, given as being the House where they gathered together, immediately after leaving service in the church. The Church House and the Parish Games involve matters of much interest and importance. The former illustrates the holding of property by the Parish for its common use; the latter illustrates the social and moral character of the Parish, and its constant tendency to promote good neighbourhood. Both illustrate the secular character of the Parish, in a remarkable way. The record remains, of 1 Edward VI., that the Church House of Hackney (Middlesex) was "A tenement buylded by the parishioners, called the Church-house, that they might mete together and comen [commune] of matters, as well for the Kyng's business, as for the church and parish." Compare with extracts on page 499 from Carew's 'Cornwall.' Extracts as to the Church House of New Brentford, and others, will presently be given. Several illustrations as to Parish Games will be found in later pages.

In Aubrey's 'Wiltshire' it is said:—"In every parish is (or was) a

this house, festive gatherings and public games were periodically held;* which did very much to promote good neighbourship and the maintenance of kindly relations. At these gatherings, collections were generally made, which went into the Common Stock of the Parish, and were applied to all purposes of a secular nature. These Festive meetings were called Wakes, Revels, but most commonly "Ales,"—as "Church-ale," "Whitsontyde-ale," "Hocking-ale," etc.†

These gatherings and games were formerly universal through the country; and we have the best evidence that their effects were most happy, in promoting that good-will which is one great end of the Institution of the Parish, and in enabling the various obligations of each local community to be borne without sensible burthen. At the beginning of the seventeenth century, a crusade was unwisely begun, by some of the clergy, against these ancient and laudable customs. The asceticism which grew up, as a natural reactionary consequence of the encroachments unquestionably made about that time on the simplicity of Protestantism, fell, a few years later, into the same unfortunate line of conduct. Innocent and healthy and beneficial recreation was branded as superstition. We are now suffering from the consequences. "Merry" England was made to put on a "sad-coloured" garment, and to look demure. Religion has not gained by this, while social well-being has suffered much. The earlier

Church-House, to which belonged spits, crocks, etc., utensils for dressing provision. Here the housekeepers met and were merry, and gave their charity. The young people were there too, and had dancing, bowling, shooting at butts, etc.; the ancients sitting gravely by, and looking on." *Intro.* p. 32 (quoted also in Brand's 'Popular Antiquities,' vol. i. p. 230). In Worsley's 'History of the Isle of Wight,' p. 210, an account is given of an ancient lease, dated 1574, "of a House called the *Church House*, held by the inhabitants of Whitwell [originally part of Gatcombe] of the lord of the manor, and demised by them to John Brode, in which is the following proviso:—'Provided always, that if the Quarter [township] shall need at any time to make a Quarter-Ale, or Church-Ale for the maintenance of the chapel, that it shall be lawful for them to have the use of the said house, with all the rooms, both above and beneath, during their Ale.'"

* "The Lord may not, by the custom, plough or break up two acres of land lying near the church, because it was anciently granted for the recreation of the youth of the Parish, after evening service on every Lord's day." Chauncy's 'Hertfordshire: Mundane Parva, in the Hundred of Bradewater. See as to *Church-House* and a *pightle of land* at Welwyne, in the same county, as before, p. 494 *note*. Compare Kennett, p. 610.

† We have "bridal," i.e. *bride-ale*, still in use.

customs cherished attachment to the Parish, and hindered the growth of those barriers and distinctions between class and class, which are admitted to be one of the worst features of modern society.* There was, then, a sympathy between all classes, which was genuine and felt, and not artificial and paraded.

The subject is itself one of so much true practical interest, and is so instructively suggestive to the real philanthropist and educationalist of our day, that I add, below, the testimonies of two very different writers; the one a well-known layman, the other a high ecclesiastic.†

* See the last words of Justice Talfourd, quoted p. 515 *note*.

† Carew, in his 'Survey of Cornwall,' published in 1602, gives the following account of these Ales and Games; of their effects; and of the purposes to which the produce of them was applied.

"For the Church-Ale, two young men of the Parish are yearly chosen by their last foregoers to be Wardens, who, dividing the task, made collection among the parishioners, of whatsoever provision it pleaseth them voluntarily to bestow. This they employ in brewing, baking, and other acates, against Whitsontide; upon which holydayes, the neighbours meet at the Church-house, and there merrily feed on their own victuals, contributing some petty portion to the stock; which, by many smalls, groweth to a meetly greatness: for there is entertained a kind of emulation between these Wardens, who, by his graciousness in gathering, and good husbandry in expending, can best advance the Church's profit. Besides, the neighbour parishes at those times lovingly visit one another, and this way frankly spend their money together. The afternoons are consumed in such exercises, as old and young folk (having leisure) do accustomably wear out the time withal. When the feast is ended, the wardens yield in their accounts to the parishioners; and such money as exceedeth the disbursements, is layed up in store, to defray any extraordinary charges arising in the parish, or imposed on them for the good of the country, or the prince's service; neither of which commonly gripe so much but that somewhat still remaineth to cover the purse's bottom.

"The Saint's feast is kept upon the dedication day, by every householder of the parish, within his own doors, each entertaining such foreign acquaintance as will not fail, when their like turn cometh about, to requite him with the like kindness.¹

"Of late times, many ministers have, by their earnest invectives, both condemned these saints' feasts, as superstitious, and suppressed the Church-Ales, as licentious. Concerning which, let it breed none offence for me to report a conference that I had, not long since, with a near friend, who (as I conceive) looked hereunto with an indifferent and unprejudicating eye. 'I do reverence,' said he, 'the calling and judgment of the Ministers; especially when most of them concur in one opinion, and that the matter controverted holdeth some affinity with their profession. Howbeit, I doubt lest, in their exclaiming or declaiming against Church Ales and Saints' Feasts, their ring-

¹ On this subject see, more fully, Kennett's 'Paroch. Antiq.' pp. 609-615.

Before quoting further from the records of Steeple Ashton, the following extracts from the Parish accounts of Bishop

leaders do only regard the rind, and not pierce into the pith, and that the rest were chiefly swayed by their example ; even as the vulgar rather stooped to the weight of their authority, than became persuaded by the force of their reasons. And first touching Church-Ales ; these be mine assertions, if not my proofs :—Of things induced by our forefathers, some were instituted to a good use, and perverted to a bad : again, some were both naught in the invention, and so continued in the practice. Now that Church Ales ought to be sorted in the better rank of these twaine, may be gathered from their causes and effects, which I thus raffe up together :—entertaining of Christian love ; conforming of men's behaviour to a civil conversation ; compounding of controversies ; appeasing of quarrels ; raising a store, which might be converted partly to good and godly uses,—as relieving all sorts of poor people, repairing of churches, building of bridges, amending of highways ; and partly for the Prince's service, by defraying, at an instant, such rates and taxes as the magistrate imposeth for the country's defence. Briefly, they tend to an instructing of the Mind by amiable conference, and an enabling of the Body by commendable exercises.”¹

“My last note touching these feasts tendeth to a commendation of the guests, who (though rude in their other fashions) may, for their discrete judgment in precedence and presence, read a lesson to our civilest gentry. Amongst them, at such public meetings, not wealth but age is most regarded : so as (save in a very notorious disproportion of estates) the younger rich reckoneth it a shame, sooner than a grace, to step or sit before the elder honest ; and rather expecteth his turn for the best room by succession, than intrudeth thereto by anticipation.” (Book i. pp. 68*b*–71*a*).

It was a quarter of a century after Carew wrote, that the Judges of Assize on the Western Circuit issued an order (clearly illegal) “for the suppressing of all Ales and Revels.” Much discontent was excited. The following letter was thereupon addressed by the Bishop of Bath and Wells to Archbishop Laud on the subject, in reply to inquiry made. It is remarkable for the temperance and liberality of its tone, and bears the character of truthfulness stamped upon it. Its date is 5 November, 1633 ; and it gives details (unnecessary to be quoted) of how the evidence here quoted from it, was collected, showing that there was no concert between those whose evidence was thus separately asked and got, though this proved unanimous in its tone.

“I find by the several answers of threescore and twelve ministers, benefited men, in whose parishes these feasts are kept, as followeth. *First*, that they have been kept not only this last year, but also for many years before, as long as they have lived in their several parishes, without any disorders. *Secondly*, that upon the Feast days (which are, for the most part, everywhere upon Sundays) the service of the Church hath bin more solemnly per-

¹ So Tusser :—

“Each day to be feasted, what husbandry worse,
Each day for to feast, is as ill for the purse ;
Yet measurely feasting, with neighbours among,
Shall make thee beloved, and live the more long.”

Stortford, Herts, in the reigns of Edward the Fourth and Henry the Seventh, shall be given, because they contain the enumera-

formed, and the Church hath bin better frequented, both in the forenoons and in the afternoons, than upon any Sunday in the year. *Thirdly*, that they have not known or heard of any disorders in the neighbouring towns, where the feasts are kept. *Fourthly*, that the people do very much desire the continuance of those feasts. *Lastly*, that all these Ministers are of opinion, that it is fit and convenient these feast days should be continued, for a memorial of the dedications of their several Churches; for the civilizing of people; for their lawful recreations; for the composing of differences by occasion of the meeting of friends; for the increase of love and amity, as being feasts of Charity; for the relief of the poor,—the richer sort keeping then in a manner open house; and for many other reasons.

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“I find that, throughout Somersetshire, there are not only feasts of dedication, but also in many places *Church-Ales*, *Clerke-Ales*, and *Bid-Ales*. The feasts of dedications are more general; and generally they are called feast-days, but in divers places they are called Revel-days. They are not known amongst the ignorant people by the name of feasts of dedication; but all Scholars acknowledge them to be in the memory of their several dedications, and some ministers of late have taught them so. Divers Churches here are dedicated to the Holy Trinity, and they are kept upon Trinity Sunday: but almost all those feasts which are kept in memory of the dedication of Churches unto Saints, are kept upon some Sundays, either before or after the Saints’ days; because (as I conceive) on the week days the people have not had leisure to celebrate these feasts. And I find that almost all the feasts of dedication are kept in the summer time, between our Lady-day and Michaelmas, because that time of the year is most convenient for the meeting of friends from all places.¹ In some places they have solemn sermons preached by divines of good note, and also Communions, upon their feast days; and in one place in this county the Parish holds Lands by their feast.²

“I find also that the people generally would by no means have these feasts taken away; for when the Constables of some parishes came from the Assizes about two years ago, and told their neighbours that the Judges would put down these feasts, they answered, that it was very hard if they could not entertain their kindred and friends once in a year, to praise God for his blessings, and to pray for the King’s Majesty, under whose happy government they enjoyed peace and quietness; and they said they would endure the Judge’s penalties, rather than they would break off their feast days. It is found also true by experience, that many suits in Law have bin taken up at these feasts by mediation of friends, which could not have bin so soon ended in Westminster Hall.

“Moreover, I find that the chiefest cause of the dislike of these feasts amongst the preciser sort is, because they are kept upon Sundays, which they never call but *Sabbath* days; upon which they would have no manner of recreation, nay, neither roast nor sod [boiled]. And some of the ministers who were with me have ingenuously confessed, that if the people should not have their honest and lawful recreations upon Sundays, after evening prayer,

¹ See Kennett, as quoted before.

² See before, p. 497 note*.

tion, in a short space, of several of these "Ales" and games ("plays"); thus showing how common they were, and how large a part of the parish funds was raised by this means.

they would go either into tipling houses, and there, upon their Ale benches, talk of matters of the Church or State, or else into Conventicles.

"Concerning *Church-Ales*, I find that in some places the people have bin persuaded to leave them off; in other places they have bin put down by the Judges and Justices; so that now there are very few of them left: but yet I find that by *Church-Ales*, heretofore, many poor Parishes have cast their Bells, repaired their Towers, beautified their Churches, and raised Stocks for the poor:—And not by the sins of the people (as some humourists [ill-humoured people] have said) but by the benevolence of people, at their honest and harmless sports and pastimes; at which there hath not bin observed so much disorder, as is commonly at Fairs and Markets.

"Touching *Clerke-Ales* (which are lesser *Church-Ales*) for the better maintenance of Parish Clerks, they have been used (until of late) in divers places, and there was great reason for them: for in poor country parishes, where the wages of the Clerk is very small, the people, thinking it unfit that the Clerk should duly attend at Church and lose by his office, were wont to send him in Provision, and then feast with him, and give him more liberality than their quarterly payments would amount unto in many years. And since these have bin put down, some ministers have complained unto me, that they are afraid they shall have no Parish Clerks for want of maintenance for them.

"There is another kind of public meeting call'd a *Bid-Ale*, when an honest man, decayed in his estate, is set up again by the liberal Benevolence and Contribution of friends at a Feast; but this is laid aside almost in every place."—Prynne's '*Canterburie's Doome*,' 1646, pp. 141–151.

It is striking to see how closely Carew's account, and that of the Bishop, who naturally looked chiefly at the subject from an ecclesiastical point of view, agree as to the spirit and effects of these festivals. In 1634, in consequence of the stir that had been made, an order was issued "that all former orders heretofore made by any Judges or Justices, for the suppressing of Church Ales, Clerke-Ales, Wakes and Revels, be revoked." This roused the ire of the country Justices, whose self-importance it touched. But the historian (Prynne, as above) makes a curious admission as to the time when their wrath put itself into action. It seems that these justices, who were so eager to put down all social meetings and neighbourly intercourse among their poorer brethren, did not begin by weaning themselves from the fleshpots of Egypt. Thus saith the Historian:—"Hereupon all the Justices of peace then present, *immediately after they had dined*," drew up a petition to the King against the revocation. "*Immediately after they had dined!*" This supplies both explanation and comment.

Unhappily, the revocation itself was done, as it was Charles's ill fate to do so many things, with unwise accompaniments. "Merry" England has consequently been a permanent loser by the whole quarrel.

The following lively description of these "measurely feastings" may be appropriately quoted here, to illustrate their character and popularity:—

"Come, Anthea, let us two
Go to feast as others do :

		Receipts.	s. d.
"An. 22 Ed. IV.	For <i>Wexsilver</i> * at Easter even and Easter		
	day		8 10
An. 5 Hen. VII.	For <i>Hokkyng Ale</i>		14 1
	For Paschal Silver		7 8
	<i>Hokkyng Ale</i>		12 6
	<i>Play Silver</i>		13 4
	The gift of John Esgore to the painting of		
	the Tabernacle of St. Michael . . .	£1 0 0	
	A <i>Church Ale</i> made for the use of the Ta-		
	bernacle		6 8
	<i>Luntis-yeld</i> [yield]		7 8
	Le <i>Wexsilver</i> in Ecclesia collect. die Pasche		7 6
	Exitus <i>cujusdam Potationis</i> [Ale] vocat. le		
	<i>Luntis yeld</i> , collect. in Ecclesia pro duobus		
	annis		15 11
	Rec. de Baculariis Ville predict. de Exitu		
	<i>cujusdam Potationis</i> vocat. le <i>Mary-Ale</i>		
	ibid. fact.	£1 10 4	
	De exitu <i>cujusdam Potationis</i> vocat. le <i>Hok-</i>		
	<i>kyng-Ale</i>		13 0
	De exitu <i>alterius Potationis</i> vocat. <i>Luntis-yeld</i>		2 7

Tarts and custards, creams and cakes,
 Are the junkets still at Wakes :
 Unto which the tribes resort
 Where the business is the sport.
 Morris dancers thou shalt see,
 Marian too in pagentrie ;
 And a mimick, to devise
 Many grinning properties.
 Players there will be, and those
 Base in action as in clothes :
 Yet with strutting they will please
 The incurious villages.
 Near the dying of the day,
 There will be a cudgell-play,
 Where a coxcomb will be broke
 Ere a good word can be spoke :
 But the anger ends all here,
 Drencht in ale or drowned in beere.
 Happy Rustics, best content
 With the cheapest merriment :
 And possess no other fear,
 Than to want¹ the wake next year."

Herrick's 'Hesperides.'

* "Wax-shot" as it is sometimes called : money subscribed towards the candles. See *Ceragium* in Spelman's 'Glossary,' and note on *Smoke-farthing* after, p. 507.

¹ That is, to be deprived of it, by "the preciser sort."

Expences.

An. 9 Hen. VII.	Pro Stipendio Armature <i>erga diem de la pley</i>	2	0
	Pro bosco et vasto <i>die de la pley</i>	5	0
	Pro 8 <i>Pullis erga diem predict.</i>	0	8
	Circa <i>carnes</i> assand [roasting].*	0	2
	Pro le <i>bruying</i> 18 modiorum	1	4
	Pro <i>baking</i> 6 Mod. frumenti <i>erga le Hok-</i>		
	<i>kyng Ale</i>	0	4

"*Memorand.* Recept. eod. an. pro *Hokkyng-Ale* 11s. 8d., et de Profic. les Greyns de ead. 8d. ; *De exitu de le pley*, 26s. 7d. ; *De exitu Potationis in Ecclesiâ fact. die Dominico prox. post diem dicti le pley*, 6s., etc."†

These "Ales" were kept all over the kingdom, both in remote counties and near London.‡ An old Almanac (1676) says:—

"At Islington	At Highgate and	At Totnam Court
A Fair they hold,	At Holloway,	And Kentish Town,
Where cakes and ale	The like is kept	And all those places
Are to be sold.	Here every day ;	Up and down."

The "Ales" were numerous. Brand mentions, in his 'Popular Antiquities,' Bride-Ales, Church-Ales, Clerk-Ales, Give-Ales, Lamb-Ales, Leet-Ales, Midsummer-Ales, Scot-Ales, and Whitsun-Ales.§ But there were other "Ales" besides these, as will be seen by the records which I now publish in this Chapter. Thus, we have, above, the Ale called "Luntis-yield," which, though I cannot find any trace of it in the archæological works treating of these matters, I take to be an "Ale" held at the time of paying the "Smoke-farthing" or "Wax-silver." *Lunt* is an old word meaning "match," and often used for "smoke;" and nothing was more consistent with ordinary practice than that, as funds for other purposes were raised by means of other regular "Ales," so the *Smoke-farthing* and *Wax-*

* This roasting, brewing, and baking, were clearly all done towards "the play" or "Hocking-Ale."

† Chauncy's 'Hertfordshire : ' Bishop Stortford, in the Hundred of Braughing.

‡ They must have been kept up till the middle or close of the last century, in many places, to judge from many tracts and references which it would be tedious to the reader to quote. Some of them exist, under the name of "Wakes," in very many Parishes, to this day ; though they have, unhappily, become disconnected from their close original connection with the Parish ; which was what gave them legitimacy and a real social value.

§ See Brand, vol. i. pp. 154 *note*, 226-229, 365, 422-436. As to Give- (given, or gift) Ales, that is, "Ales" kept out of bequests left for the purpose, see particularly also 'Archæologia,' vol. xii. pp. 11-20.

silver should, in some parishes, be gathered at an *Ale*. Then there was the *Hocking-Ale*, one of great importance; and the thorough kindly *Bid-Ale*.^{*} There was also an *Ale* called the *Mary-Ale*, held, it must be presumed, on one of the days consecrated to the Virgin Mary. The King-game, May-Pole, Wakes, and other similar periodical amusements, which also formed part of the regular Parish arrangements, were rather Shows and Plays than "Ales;" though they all belong to the same interesting group of customs, that formerly made poor and rich equally love the Parish of their childhood, and cling to the happy memories and social responsibilities which it ever carried with it; and made England to be, truly, "Merry England." Herrick thus truthfully alludes, in his peculiarly sweet and flowing verses, to these pleasures of "The Country Life:"—

"For sports, for pageantry, and plays,
Thou hast thy eves and holydays,
On which young men and maidens meet
To exercise their dancing feet;
Tripping the comely country round,
With daffodils and daisies crowned.
Thy Wakes, thy Quintels, here thou hast,
Thy May Poles too with garlands graced;
Thy Morris-dance, thy Whitsun-Ale,
Thy Shearing-feasts, which never fail;
Thy Harvest-Home, thy Wassail-bowl,
That's tost up after Fox-i'-th'-hole;
Thy Mummeries, thy Twelfth-tide Kings
And Queens, thy Christmas revellings;
Thy nut-brown mirth, thy russet wit,
And no man pays too dear for it."

And Tusser makes it a prominent point in his 'Points of Huswifery' † that—

"Good huswives, whom God hath enriched enough [enow]
Forget not the *Feasts* that belong to the plough.
The meaning is only to joy and be glad;
For comfort, with labour, is fit to be had."

As to the meaning of the word "Ale" itself, it is curious that so much doubt has been expressed. Even ridicule has

^{*} Before, p. 501 note. The *Hocking-Ale* and the feast of the *Hock-Cart* must not be confounded. See Herrick's beautiful description of "the Hock-Cart, or Harvest Home," in 'Hesperides.'

† Not in his 'Five Hundred Points of Good Husbandry,' as Brand erroneously says; though the excellent old poet well adds to his title of 'Points of Huswifery,'—'united to the comfort of Husbandry.'

been sought to be thrown upon attempts to trace its true origin and meaning. It is easy to sneer at good old customs, which modern selfishness and cold materialism shrink from, and cannot even understand; and to say that these "Ales" were so called because stoups of Ale were then freely swilled. Brand does indeed* take a broader view, though doubtfully, and suggests an identification with the *Yule* of Christmas. There can be no doubt of this identification. But neither Brand nor his editor, Sir H. Ellis, seems to have been familiar with the language or traditions of our forefathers; or illustrations from these would have been cited by them. These are, indeed, conclusive; and can leave little doubt that the name of the beverage was taken from the occasions when it was chiefly used, instead of these occasions having borrowed their names from the beverage then drunk.†

These occasions,—these "ales," wakes, festivals, and plays (all must be taken together),—assume an aspect of much importance to the thoughtful man, to the statesman, and to the practical student of our Institutions, when it is considered how great an influence it is universally admitted that traditions, and gatherings together of the people, have always had upon the character and independence of a nation;‡ and when it is

* Vol. i. p. 364.

† In the Old-Norse, the verb "el"—infinitive form "*ala*"—(a word of very ancient kindred, for we find *alo*, *alere*, in the Latin; *ἄλρω*, *ἄρῶ*, in the Greek; and *עלה* in the Hebrew; all being words expressing the same original idea) was, to give that which raises up the strength. Finn Magnuson expressly says of this word:—"Atque adeo simul cibum potumque in se comprehendit, *ita, fere specialius, latum lautumque convivium designat*" (Edda Sæmundar, vol. i. p. 599: ed. Hafniæ, 1787). And, in reference to the special use of a derivative from this word, to express the great Christmas festival, the *Yule*, the same author adds:—"Habebant et *alia festa*, ex. gr. *autumnale*, solennem hunc esum." Several of the principal English "Ales" were held in Autumn.

See further, an interesting note on the subject of "Ales," including several illustrative quotations from Spenser, Milton, Pierce Plowman, Chaucer, etc. in Warton's 'History of English Poetry,' vol. iii. pp. 118, 119 (ed. 1840).

‡ See the very striking quotations which I have given from Sir Walter Raleigh's 'Prince' in 'Local Self-Government and Centralization,' pp. 37, 179, 180, 238; of which it is sufficient to quote here the injunction, that one of the chief means by which "the sophistical and subtil tyrant is to hold up his state" is "to *forbid feasting*s and other meetings,—which increase love, and give opportunity to confer together of public matters,—under pretence of sparing cost for better uses." ('The Prince,' p. 27, ed. 1642.) This is a course which has been craftily followed, with elaborate care, by the authors

observed that these occasions heretofore formed, invariably, a part of the regular system of Parish action throughout England;—an action mixed up and interwoven with the whole history of every parish; with the duties of its officers, and its own relations to the State. It thus becomes plain, how much more the Institution of the Parish enters, at Common Law, into the very life and social existence and happiness of the people, than those are able to conceive, whose minds are unable to grasp anything that is not found within the four corners of an Act of Parliament.

Statesmen and sincere philanthropists may both learn something valuable and very practical from the study of this subject.

Nothing occurs more often in the churchwardens' accounts, and other entries, in old Parish records, than items as to maintaining the "Church House." It appears from many entries, but, in precise terms, from one of the date of 1581, that the "Church House" of Steeple Ashton stood on land for which an annual payment, probably a rent-charge, of two shillings and fivepence, was paid to the crown. Entries of that payment occur specifically, as made to the king's (or queen's) "reeve"; a rare, though correct, illustration of the use of that word in such a sense. The parish maintained the House at its own expense; and the latter seems to have needed very much attention of this sort,—proving the constant use to which it was put.

A few entries from the accounts of this Parish will illustrate the above matters. These accounts must also be considered in reference to the important point of the Parish having and holding property in its corporate capacity.*

The following are entered as the receipts in the year 1558, the 5th and 6th year of Philip and Mary:—

"Imprimis, received of the *church stock* † 10s

of the New Poor Law Acts, and all the other modern devices of centralization, in order to destroy the reality of sound Parish management, and the spirit of independence in the people. Bureaucracy and functionarism are by far the most complete embodiments, in practice, of what is called Machiavelianism, that the world has ever seen.

* See before, p. 269.

† That is, as Interest. The word "Stock" must be clearly understood as meaning a permanent fund belonging to the Parish. See after, pp. 511, 514. The Interest for the use of this, or, on emergency, a part of the principal, was disposed of at the pleasure of the Parish. See this more particularly illus-

Item, made clearly [that is, after all expenses paid] of the <i>Church-ale</i>	37s 2d
Item, r ^d of William Bull for <i>rent</i>	6d
Item, r ^d of Jone Morrys for <i>rent</i>	18d
Item, r ^d of John Iles for <i>rent</i>	20d
Item, r ^d for <i>smoke-furthing</i> *	7s 3d
Item, r ^d of Jone Morrys for <i>rent</i>	18d
Item, r ^d of William Bull for <i>rent</i>	6d
Item, r ^d of John Iles for <i>rent</i>	20d
Item, r ^d of John Iles for <i>rent</i>	20d
Item, r ^d of John Iles for <i>rent</i>	20d
Item, r ^d of John Morrys for <i>rent</i>	18d
Item, r ^d of Jone Morrys for <i>rent</i>	18d
Item, r ^d of John Swayne [<i>? paid after date</i>]	2s 4d
Item, made of <i>Whitsontyde Ale</i> clearly †	25s 4d
Sum.	£4 13 5"

erated, in the case of the Poor Stock, in Appendix B. See also, as to apprentice stock, before p. 276.

* "Smoke-farthing" was an ancient charge (*quasi, license to burn,*) paid, possibly, sometimes as tithe, but, from all the allusions to it, most probably as an acknowledgment by those who had the right to cut fire-bote (wood or turf for burning). It might be either paid by a Parish, or any individual, to the Lord of the Manor, the Crown, or even the Parson, according to whom the estate was vested in; or by owners and occupiers within a Parish, in acknowledgment of rights exercised by them over the Parish Woodlands or Common lands, or any estate vested in the Parish. Thus Smoke-money might be paid either by or to the Parish, according to the facts of tenure. It often became reduced to a small composition. (See Spelman's 'Glossary,' 'Smoke-silver.') It is often found named in old records. Thus, Lambeth Parish (Surrey), 1519:—"Paid for smoke-money at St. Mary's eve, 2s. 6d." In that case it was a payment made by the Parish, instead of, as in the above case, to it. So again; Lambeth, 1521:—"Paid by my Lord of Winchester's scribe for smoke-money, 2s. 6d." (Lysons, vol. i. p. 222.)

The terms *smoke-farthing*, *smoke-silver*, and *smoke-money*, are used indifferently. They were an entirely different thing from what they have often been confounded with, namely the *hearth-penny*, *hearth-silver*, *fumage* (*fuage*); which latter was originally in the nature of Peter-Pence, levied on every house, and was the origin of the Hearth tax. Blackstone (vol. i. p. 324) has confounded these two distinct things.

Wax-silver, *Wex-silver*, *Wax-shot*, (*ceragium*,) was a contribution made towards keeping up the Candles which form so conspicuous a part of the Roman Catholic ceremonial. See as to Candlemas day, Brand, 'Popular Antiquities,' vol. i., p. 38. See "Wex-Silver" and "Luntis-yield" before, pp. 502, 503.

† Though the "Church-Ale" was often held later in the year, the "Whitsun Ale" itself was sometimes so called. Thus Aubrey (in the place before quoted) says:—"There were no rates for the poor in my grandfather's days; but for Kingston St. Michael (no small Parish) the *Church-Ale* of *Whitsunday* did the business."

The first item in the expenses of the same year is, "For reparations, daubing, and purging of the *Church House*." In the same expenses occur, further:—"For the church house rent;" and, "for one dozen of reeds." Following the latter is:—"for mending the church house with the same reeds;"—that is, no doubt, thatching it.

It will be seen that the Rents named as received, in this account, are evidently quarterly Rents for property belonging to the Parish. In the next year, Rents are found again, though some of them in different names, and sometimes with important additional information. Thus we find:—"Received of John Whatle, for one acre of grass." In the same year there are fresh items for work done about the Church House. Among several such expenses, including the rent, and "sawing of boards for the Church House end," is the following:—"Item, paid for one load of thorns to make the hedge of the Church House garden;" and "for felling and carriage of the same;"—following which is—"Item, for the making of the foresaid hedge."* Similar items, on all points, are continually found.

The same year shows that a vestry clerk was at that time regularly employed; one item being, "to the clerk, for writing our church reckonings." This often recurs. An extraordinary number of payments are also entered, throughout the record, as having been made for repairing the clock and bells.

It is worth note, that the churchwardens are sometimes called "*church-men*" in this record; and that both are clearly chosen by the Parish throughout, and rarely serve more than one year, or two at the outside. This was long before the date

* In the same year, the first of Elizabeth, is an entry "for pulling down of the Rood," and "for pulling down of the altar;"—the Protestant faith being now in the ascendant again. In the next year is the following:—"Paid to William Ffelpes for bringing home our Bible."

So we have, in the Churchwardens' accounts of Lambeth Parish, under date 1570:—"Rec^d of the vestments and copes, sold by consent of the Parish; for the borders of the herse-cloth, and for the images taken out of the communion cloths;" "For the white satin that was the cross in the black cloth;" "For a canopy cloth of red velvet, with stars embroidered, and bulions of silver and gilt;" etc. etc. (See after, p. 519.)

Such entries as these, in Parish Records (which are very frequent) would, it may be suggested, have been a much more direct and sound mode of determining some of the questions raised in the case of *Liddell v. Westerton*, before named, as to the interpretation to be put on the rubric as to Church "*Ornaments*," than most of the arguments there raised. See before, p. 439, *note*.

of the Canon containing the usurpation already commented on; and which Canon illegally attempted, and has been illegally made use of, to set aside the custom in so many places.

The earliest date at which the Parish Meeting is called a "Vestry" in this record, is in 1569. From that date every such meeting is so called.

The same record contains entries as to the other officers of the Parish; illustrating how regular and complete were local action and self-government in England at that time; and thus contradicting what superficial politicians and partisan historians seek to impose as the creed,—utterly inconsistent as it is, in all respects, with truth and fact,—that English liberties are of much later growth. These entries include officers for administration of relief to the poor, thirty years before the celebrated Act of Elizabeth was passed. The entry as to choice of officers is thus made on the 26th day of March, 1570:—

	" John Silverthorne, Roger Martin,	}	<i>Churchwardens.</i>
West Ashton :—	William Marks,		<i>Constable.</i>
Old :—	Jhon Stone, Jhon Margorn,	{	<i>Waymen</i> * of West Ash- ton do give up their Accounts.
New :—	Richard Williams, Richard Silverthorne,	}	<i>Waymen.</i>
Old :—	Jhon Burges, Wm. Whatley,	}	<i>For the poor.</i>
New :—	Henry Botcher, John Sweting,	}	<i>For the poor."</i>

And it goes on to give the lists for other parts of the parish; which is divided into four tythings or townships, having most of their officers, but not the Churchwardens, separate. Such lists are found, complete and regular, year after year.

In 1570, at a full vestry, "it is agreed that there shall be yearly paid for keeping the clock, 3s. 4d." Eleven years later, "it is condysented and agreed by the parish, that John Symmes shall keep the clock and the bells in good order, and to have yearly 8s."

In 1573, an additional office was erected by the will and choice of the Parish, in reference to the relief of the poor.

* The Surveyors of Highways, as we now call them, are called, in this record, by the various names of "Waymen," "Waywardens," "Supervisors of Highways," and "Overseers of Highways."

Two persons were then named, in addition to the "collectors," to act as "distributors."

It is clear that it was held the duty of the officers to make presentments, or reports, to the full Vestry, of the way in which the duties to be done by the parishioners, and which the respective officers had, each, under his particular charge, had been fulfilled during the past year. Thus we find, 1573, "Old waymen do present that every man hath carried,"—that is, done team-work on the roads; and again, "Old waymen do say that all is well, saving that John Collet and Jhon [*sic*] Haiward is behind." Elsewhere, they "present that all is good and fair;" and elsewhere, the names of all defaulters are presented.

At a Vestry Meeting, holden 26 Dec. 1576, "William Silverthorne is, by order, to pay unto the church, for that he refuseth to be church-man, 6s. 8d.;" and there is a similar entry as to another recusant churchwarden in 1578.

26 Dec. 1580. "The whole vestry consenteth that Mr. Rogers shall be clerk [*i. e.* parish clerk], and to enter at our Lady's day next; and warneth William White then to depart."

It is a matter of no slight nor unimportant interest, that the first entry in this record, which at all approaches to the character of the modern church-rate, occurs on 5th Nov. 1581:—

"At this vestry, it was agreed, that all the parish, and every householder therein, should pay a penny of every head, at Easter, to the vicar for communion bread and wine;* and the overplus to be paid to the churchwardens."

And then, with a remarkable carefulness to record how unanimous the parish was, in this first example, for forty years at the least, of a special rate, it is added, in a separate clause:—

"All the parish doth agree to this order, saving Walter Marks, Ellis Morgan, Robert Notting, Jhon Silverthorne."

Another rate of the same specific kind and purpose was made in April, 1625, and others elsewhere. But it was not made every year: only thus occasionally, when the other sources of income proved insufficient.

* The wine used for Communion is specifically named in the accounts that follow. It is almost uniformly *sack*. Large quantities seem to have been used. Thus, one account (1636) contains two items; one of 15 quarts of sack for one day; another of 5½ quarts for another day. The same account contains another item of 15 quarts of *muskaden*, for communion on another day. The price of each was nearly the same; namely, within a small fraction of a shilling a quart.

In the above-named year, 1581, is an entry in the accounts:—

“For delivering a presentment of inquiry, whether that any man had any son within our parish, beyond the seas.”

The Church House, or parts of it, were let to tenants, for such time as they were not wanted for immediate use by the Parish.* There are many entries such as, 1585, “Margaret Crewe payeth for the Church House yearly, 3s. ;”—“Richard Ellis payeth for the Church House yearly, 12*d.*” In the same account is:—“Andrew Notting payeth for his shop yearly, 12*d.*”

The following speak for themselves:—

26 Dec. 1586. “Agreed, by the consent of the Parish, that William White, the clerk, shall keep the clock, bells, make clean the church, sweep the leads, and ring the bell for coverfue [curfew] and day ;† and shall have yearly for his labour, 13*s.* 4*d.*

1591. “*Memorandum*: It is agreed that John Pound shall have the shop, of [the] parish, from year to year, at 12*d.* by the year.”

26 Dec. 1595. “*Memorandum*: That all the Vestry have consented and agreed, that hereafter every man shall pay 6*s.* 8*d.* for every grave to be made in the church,‡ before there be any stone moved; otherwise, the churchwardens shall pay it at the day of accompts.”

There are a vast number of gifts, of no great amount each, but altogether considerable, expressed to be “for the poor, to remain in Stock for ever.”§ The use made of this Stock will be seen in the complete extract given in the Appendix.

The earliest entry of a parish rate, for general purposes, is under date of 26 Dec. 1600. There has before been one to cover expenses of Communion. But now there comes a regular taxation for general purposes. And it is made in earnest; full powers of prosecution being given—as it has already been shown that they could be—in case of default. The churchwardens, as already seen in the case of opening graves in the church, are required to fulfil their duty; or else themselves are declared liable. And it will be seen that they are held very strictly to this liability.

* See the example of the same thing in the township of Whitwell, Parish of Gatcombe, Isle of Wight, before, p. 497 *note*.

† That is, evening and morning. See a later entry, 13 Jan. 1655, after, p. 513. And see before, pp. 439, 440.

‡ There are many entries of this kind: but all refer to burying in the church. The common law right in the Churchyard is left untouched. And it will be observed that it is the Vestry which determines this thing,—not the parson who attempts to claim it, as in modern times. See before, p. 443; and see after, p. 512: A.D. 1635.

§ See pp. 506 *note*, 514.

26 Dec. 1600. "It is agreed, at the Vestry aforesaid, that every parish-ioner, and all men that hold any lands in the parish, shall pay this year, at Easter or before, for every yard-land* 12*d.*, and so after that rate. And that the churchwardens shall present those that are behind ; or else they shall pay it at their own charges."

After this date, a similar rate was very often made and levied, but differing from time to time in amount. It appears to have been first called a "rate," in the Steeple Ashton records, in 1602.

The year 1609 contains a record of two rates made "by a general consent." The same year records the settlement of a Lawsuit, "before the whole Vestry, being gathered together."†

1610. "It was agreed that every man should bring in their rate to the communion-table, that the churchwardens might not be too much troubled in the collection of it."

This Bye-Law is repeated the next year. In 1615 it is made much more stringent :—

"Agreed at this vestry, that the churchwardens from henceforth shall gather up the rates made, in the year of their office, or present them that make default ; or else to be liable, for the payment of what is behind, themselves, and to continue, till the payment thereof, in their office."

The same Bye-Law is repeated later.

30 March, 1630. "They do affirm the yard-lands of the parish to contain 148 yard-lands and three quarters."

27 Dec. 1634. "It is ordered at this meeting, that the Overseers and Inhabitants of Hinton, being of this Parish, shall yearly meet upon St. Steven's day, and give accompt how the poor's stock, heretofore given to Hinton by John Tucker and others, is distributed, to the end that the poor may be duly paid."

This is an interesting illustration of the relations of the whole Parish to one of its parts, and of the care taken that charitable trusts were duly executed.

31 March, 1635. "It is agreed and ordered, that there be paid 12*d.* for

* The *yard-land* is a variable measure. In some counties it is 15 acres: in others 20, 24, 30, or even 40 acres. The word would, in our modern pronunciation, be more properly "girdland." It means simply, a measured quantity; one *girt round*. The "gird-land" is named in the Laws of Ina, King of Wessex (in which Wiltshire lies) A.D. 688. The quantity of yard-land which a man held, used formerly sometimes to determine the Parish Offices he was bound to serve. Thus, by the custom of Wimbledon (Surrey) (where the *yard* is 15 acres), every person who held two yard-lands, or 30 acres, was liable to serve the office of beadle: those who held three yard-lands, the office of reeve or provost.

† See the extracts before, pp. 499, 500 *note*; where the settlement of Lawsuits at "Ales" is stated to be frequent; also after, p. 524.

the ringing of the great bell at the funeral of all such persons as do not pay to the Church Rates [special Church Rates having been before then made], and to be paid to the churchwardens for the time being : Provided, that for the wife or children of such persons as do pay to the church, there shall be nothing paid for them."

19 April, 1636. There is an enumerated account of ten bonds delivered to the churchwardens, on behalf of the parish, from persons holding parish Stock at interest. These bonds are often required to be brought in and renewed, for the security of the parish.

27 March, 1638. "It is recorded, by general consent, that whereas one seat which did anciently belong unto the farm of West Ashton, late in the tenure of John Marks, deceased, is lost and taken away, by reason of the new placing of the pulpit ; and forasmuch as there is a sufficient seat or place also gained in the second seat in the rank adjoining to the foot of the pulpit ; It is therefore agreed and allowed, that the owner of the farm of West Ashton aforesaid, for the time being, shall, for ever hereafter, sit in and enjoy the said new seat so gained as aforesaid, as belonging to the said farm."*

In the accounts of 1639 are two items showing that the title to the Church House had to be defended in courts of Law. The same accounts contain the payment of the old rent to the Crown, £s. 5*d.* The entries are :—

"To Mr. Beach, for Law about the Church House, £2. 9*s.* 2*d.*"

"To Mr. Marks, for Law about the Church House, and making the Register Book, £1. 1*s.* 5*d.*"

13 July, 1645. A separate Collector is appointed, for a separate rate again made to cover the expenses of communion.†

The following Order gives a remarkable example of the Bye-Law of a Parish coming in aid of Statute Law :—

16 April, 1650. "It is agreed and ordered at this vestry, that every person rated to the relief of the poor shall henceforth, according to the Law, make payment of his rate by the month, and to be received accordingly ; and if any man do refuse to pay his rate, then he so refusing is to pay that double. And the overseers of the poor may make the rate double on him as aforesaid."‡

Among many other illustrative entries, the following may be instructively quoted :—

13 Jan. 1655. "Agreed upon, at this vestry, that there is allowed for ringing the bell at four of the clock in the morning, and eight in the evening, forty shillings per annum, to be paid quarterly."§

* See before, pp. 440, 441. There are several entries of the same kind.

† See before, pp. 178, 510.

‡ See after, Chap. VIII. Sec. 7.

§ See entry 26 Dec. 1586, before, p. 511.

1 June, 1656. "At a vestry then held, it is ordered that from henceforth there shall be but one Overseer for [the *tything* of] Steeple Ashton."

15 Jan. 1659. "It is ordered, that the last overseer of the poor of Steeple Ashton, shall forthwith give in his accompts in writing, of his payments and times of payment thereof, to the new overseers, and Mr. Christopher Bennette, and Mr. Henry Martyn, and Mr. Thomas Munden; who are to examine the same with the truthes [vouchers] thereof:—which is ordered to be done on Friday next, at two of the clock in the afternoon."

1 April, 1662. "It is agreed at this vestry, that five shillings and fourpence the yard-land shall be collected for the year 1662, for a new bell and ringing loft."

26 July, 1663. "Whereas there are, by several acts of parliament, taxed upon the parish of Steeple Ashton, yearly, towards the relief of the maimed soldiers and mariners,* and for the relief of the poor prisoners of the gaol, King's Bench, and Marshalsea,† the yearly sum of four pounds three shillings and eight pence, to be quarterly paid; and it is by the Vestry so thought fit and ordered:—That the inhabitants of the chapelry of Semington shall yearly pay, for their part, towards the said several payments, the yearly sum of nineteen shillings and eight pence, and the Inhabitants of Steeple Ashton, West Ashton, and Hinton the residue."

Here, again, is a Bye-Law of Vestry, settling the relations and assessments of the different parts of the Parish,‡ and coming in aid of a Statute. So again, on the latter point:—

12 April, 1664. "We do agree to carry twelve loads for every plough, instead of six days' work by the Statute. Item, that every yard-land that the owners have not ploughed [*i.e.* grass-land], shall pay 6s. for every yard-land."

This last Bye-Law refers to the Highway Act.

13 March, 1664. "*Imprimis*; for that it appeareth, the ancient stock of benevolence to the poor people of Steeple Ashton doth amount unto the sum of £48,§ and that the same is in great danger of losing:—wherefore It is Ordered, That all and every person that owe the same or any part thereof, do bring in the same to the Vestry to be held in the Easter week next ensuing, and paid unto the Overseers of Steeple Ashton for the time being; and for default of payment thereof, the Overseers shall, of the time being, take such legal course for the recovery thereof, as by counsel shall be advised; and the charges thereof to be borne by the Inhabitants of Steeple Ashton, at the usual rate to the poor." "*Item*: whereas there hath much poverty happened unto this parish by receiving of strangers to inhabit there, and not first securing them against such contingencies: and for avoiding the like occasions in time to come,—It is Ordered, by this Vestry, that every

* The Act of 35 Eliz. c. 4, was the first of these. It was continued, with modifications, by several later Acts.

† See 14 Eliz. c. 5, s. 38; 43 Eliz. c. 2, s. 14. See another allusion to the same payments, before, p. 98. ‡ See pp. 490 and *note* *, and 512.

§ See pp. 506 *note*, 511. In Appendix B, under year 1625, the sum of the above Stock is stated at £45. The same Appendix shows how it became increased from time to time.

person or persons whatsoever, who shall let or set any housing or dwelling to any stranger, and shall not first give good security for defending and saving harmless the said Inhabitants from the future charge as may happen by such stranger coming to inhabit within the said parish,—and if any person shall do to the contrary,—It is agreed that such person, so receiving such stranger, shall be rated to the poor to 20s. monthly, over and besides his monthly tax.”

Instances of penalties imposed by Bye-Laws, of which the foregoing is an example, have been quoted before; others will follow.

The produce of the “Ales” has been seen to enter, as a regular item, into the parish accounts of Steeple Ashton. The following extracts, from old parish accounts in other counties, further illustrate the thorough social feeling and sympathies which used to be habitually cherished through the means of the Institution of the Parish, at the same time that they illustrate others of the various secular purposes which the Parish fulfils. It will be seen that the Public Games thus had and kept in the parishes, were managed entirely as parish affairs, and that the cost of them was paid out of the parish funds; while the results of them yielded a profit to the same funds. Their moral and social profit was far greater. Why are not Parish Games still habitual?*

The first of this set of extracts is from the records of Kingston-upon-Thames. It relates chiefly to the carrying out of a festival called the King-game. The minuteness of its particulars will not be uninteresting.

“Be yt in mynd, that y^e 19 yere of Kyng Harry y^e 7, at the geveng out of the Kynggam by Harry Bower and Harry Nycol, chercwardens, amounted clerely £4. 2s. 6d. of that same game.

Mem. That the 27 day of Joun a^o 21 Kyng H. 7, that we,
Adam Bakhous and Harry Nycol, hath made account
for the Kenggam that same tym don; Wylm Kempe,
Kenge, and Joan Whytebrede, Quen; and all costs
deducted £4 5 9
23 Hen. 7. Paid for whet and malt, and vele and motton and
pygges, and ger [gear] and coks [cooks], for the
Kyngam† 0 33 0

* The last words uttered by Mr. Justice Talfourd apply, with striking truth and force, in confirmation of all that I have said on the Parish “Ales” and Games:—“If some ask, what is the great want of English society? I would say, that it is the mingling of class with class: I would say, in one word, that that want is the want of sympathy.”

† The next year there is given in detail as follows:—“Cost of the Kyng-

1 Hen. 8. To a laborer for bering home of the geere after the
Kyngham was don 0 1 0

A multitude of details on this King-game might be added, did space permit. The following relate to other Parish games in the same place; the items prove how complete and well arranged these public sports were.

“23 Hen. 7. To the menstorell upon May day £0 0 4
For paynting of the mores [morrice] garment, and
for sarten gret leveres [liveries] 0 2 4
For paynting of a bannar for Robin Hode 0 0 3
For 4 plyts and $\frac{1}{4}$ of laun for the mores garments 0 2 11
For a gown for the lady 0 0 8
For bellys [bells] for the dawnars 0 0 12
24 Hen. 7. For litile John's cote 0 8 0
1 Hen. 8. For silver paper for the mores dawnars 0 0 7
For Kendall [green] for Robyn hode's cote 0 1 3
For 3 yerds of white for the frere's cote 0 3 0
For 4 yerds of Kendall for mayde Marian's huke [hood] 0 3 4
For saten of sypers for the same huke 0 0 6
For 2 payre of glovys for Robin hode and mayde Maryan 0 0 3
For 6 brode arovys [arrows] 0 0 6
To mayde Marian for her labour for two years 0 2 0
To Fygge the laborer 0 6 0
11 Hen. 8. Paid for three brode yerds of rosett for making the
frer's cote 0 3 6
Shoes for the mores daunsars, the frere, and Mayde
Maryan, at 7*d.* a peyre 0 5 4
13 Hen. 8. Eight yerds of fustyan for the mores daunsars' cotes 0 16 0
A dosyn of gold skynnes for the morres 0 0 10
15 Hen. 8. Hire of hats for Robynhode 0 0 16
Paid for the hat that was lost 0 0 10
16 Hen. 8. Paid for 6 yerds $\frac{1}{4}$ of satyn for Robyn's cotys 0 12 6
For making the same 0 2 0
21 Hen. 8. For spunging and brushing Robyn hode's cotys [coats] 0 0 2
28 Hen. 8. Five hats and 4 porses for the daunsars 0 0 4 $\frac{1}{2}$
4 yerds of cloth for the fole's [fool's] cote 0 2 0
2 ells of worstede for maide Maryan's kyrtle 0 6 8
For 6 payre of double sollyd showne 0 4 6
To the mynstrele 0 10 6”

ham and Robyn-Hode, viz. A kylderkin of three halfpenny bere, and a kylderkin of singgyl bere, 2*s.* 4*d.*; 7 bushels of whete, 6*s.* 3*d.*; 2 bushels and $\frac{1}{2}$ of rye, 1*s.* 8*d.*; 3 shepe, 5*s.*; a lamb, 1*s.* 4*d.*; 2 calvys, 5*s.* 4*d.*; 6 pygges, 2*s.*; 3 bushell of colys, 3*d.*; the coks [cooks] for their labour, 1*s.* 11 $\frac{1}{2}$ *d.*” And the following occur later:—“1662. Two terces of claret, £13. 10*s.*” “1688. Twelve bottles of sack and the bottles, £1. 1*s.*; 24 bottles of claret and the bottles and flaskets, £1. 10*s.*”

I cannot but regret that space forbids my giving more of these highly interesting extracts. I must content myself with referring to the volumes of Lysons and Brand.

Then we find receipts ;—such as the following :—

"1 Hen. 8. Rec ^d for Robyn hood's gaderyng	4 marks
5 Hen. 8. Rec ^d for Robyn hood's gaderyng at Croydon	0 9 4
16 Hen. 8. Rec ^d at the church-ale, and Robyn hode ; all things deducted	3 10 6"

These illustrations may be fitly closed with the following inventory of "properties" belonging to the Parish, and kept for use at these "plays" :—

"29 Hen. 8. *Mem.* Lefte in the keping of the wardens nowe beinge :—a fryer's cote of russet ; and a kyrtle of worstede, weltyd with red cloth ; a mowren's [moor's] cote of buckram ; and 4 moores daunsars' cotes of whitte fustian, spangelyd ; and two gryne saten cotes ; and a dysardd's [fool's] cote of cotton ; and 6 payre of garters with bells."

There are numberless entries, in all old Parish Records, for ringing the bells on all occasions when any political or other circumstance occurred. Kingston-on-Thames being not very far from London, these entries are particularly numerous in the accounts for that Parish.*

The following further illustrate the Parish games, and the collections made at them, in contribution to the Parish stock.

"21 Hen. 7. <i>Mem.</i> That we, Adam Backhous and Harry Nycol accountyd of a play	£4 0 0
1 Hen. 8. Rec ^d for the gaderyng at Hoc-tyde	0 14 0
17 Hen. 8. Rec ^d at the church-ale	7 15 0
1565. Rec ^d of the players of the stage at Easter	1 2 1½
1578. Rec ^d of the women upon Hoc-Monday	0 5 0"

The following is a curious illustration of a Bye-Law, made at the will of the Parish, for a rate towards increasing the Priest's income :—

"23 Hen. 7. *Imprimis*, at Easter for any howse-holder keypyng a brode gate, shall pay to the parochie prest's wages, 3d. *Item*, to the paschall, ½d. ; to St. Swithin, ½d.

"Also any howse-holder keypyng one tenement shall pay to the parochie prest's wages, 2d. *Item*, to the paschall, ½d., and to St. Swithin, ½d. Also if he have a wyff and kepe a chamber, the same duties. Also any journeyman takyng wayges shall pay to the paschall, ½d. *Mem.* That the churchwardens must pay to the vicar at Easter for the parochie prest wayges 0 53 4"

The following, also from the records of Kingston, are instructive illustrations of various matters of Parish usage :—

1572. The making of the cucking stool† [to punish scolds ; there are frequent entries as to this]	£0 8 0
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* See before, p. 439.

† Parishes were liable to be prosecuted if they had no tumbrel and cucking-stool. This illustrates the important point dwelt on before pp. 216, 369, and elsewhere.

1597. For bringing the town pot from Mr. Evelyn's,* and scouring the same	0	0	6
1598. To them that wore the town armour,† two days, at 8 <i>d.</i> a daye	0	7	0
To the soldiers, towards their wages, more than we gathered	0	0	20
1601. To Henge's man, for bringing a letter, that the armour should not go to Rye-gate	0	2	6
1603. To James Allison and four others, for carrying the armour at the coronation	0	13	4
For armour	4	0	0
1609. For a coat for the whipper,‡ and making	0	3	0
1634. A vizard and cap for the whipper	0	0	18
1670. Old Chitty the whipper, a quarter's wages	0	3	4
1651. For ringing the curfew bell for one year	1	10	0"

In the accounts of Lambeth (Surrey) occur many such entries as the following:—some of them further illustrating the im-

* The seat of the Evelyns, now of Wotton, Surrey, was formerly at Norbiton Hall, Kingston. The name often occurs in the old Kingston records. More thoroughly colloquial Saxon names than Norbiton (North-bit-on) and Surbiton (South-bit-on), both in Kingston, can be nowhere found.

† Not only is every man in England bound, by the Common Law, and ancient Statute Law, to have sufficient arms (every weapon was formerly called "armour")—a provision peculiarly characteristic of a free people,—but every Parish (Town) was also bound to have, and keep ready for use, a certain amount of armour, as its quota towards the national defence; and, when called upon, the Parish had to find the man or men, as occasion needed, fitly trained to the active use of this armour. Thus it was that the sense of identification of every Parish with the State was thoroughly kept alive, as the above-quoted records well illustrate. There was a regular "View of Armour" made twice every year by the Constables; when all Persons or Parishes found wanting, were presented. See Statute of Winchester (13 Ed. I. stat. 2, c. 6); before, p. 18; and an illustration in Kennett's *Par. Ant.* p. 266. Gifts and bequests were often left to Parishes to supply the cost of the parish "armour" and "setting out of soldiers." See quotation from the Stat. 43 Eliz. c. 4, before, p. 275 *note*; and see the modern case of *Wilkinson v. Merlin*, 2 Crompton and Jervis' Reports, p. 636. See also the *note* on next page, as to Parish "Butts."

Further illustrations of this "armour" will presently be given. In country places, the armour was kept in the church for security; and so got to be sometimes called the "church armour" or "church harness," though having nothing whatever to do with the church; just as the Parish House got called the "Church House" (before, p. 496). In the records of Lambeth Parish occurs the following, in 1568:—"For skouring the church harness, and carriage to and fro; and a man to wear it before the justices, 3*s.* 8*d.*"

‡ Other entries explain the uses of this Parish Officer. Thus, in this same Parish of Kingston, we have:—"1561. Paid Fawcon for a year's whipping of the dogs out of the church, 8*d.*" In the accounts of the parish of Mortlake (Surrey) there occurs:—"1646. Paid for a frame and a whip that hangs in the church for drunkards, 1*s.*"

portant fact that contributions to the Parish Stock were collected at the time of Public Games; thus combining wholesome recreation with the permanent interests of the place. Others illustrate the use of the Parish Armour.

"1515. Rec ^d of the men for oke [Hock] money	£0	5	7
... .. wyffs [wives] for oke money	0	15	1
1516. Rec ^d of the gaderynge of the churchwardens' weyffes on Hoke-Monday	0	8	3
1521. Rec ^d of my lady of Norfoke, of hok money	1	12	3½
1554. Rec ^d of John Brasy's wife, for money that she received and gatheryd with the virgyns	0	5	6
1570. Rec ^d of the vestments and copes, sold by consent of the parish. [Many of these are named, and fetched large prices: Thus:—] A sepulchre cloth of white sarsenet	1	0	0
A canopy cloth of red velvet, with starrs embroidered, and bullions of silver and gilt	2	10	0
1588. To two men for bringing the church armour after breaking up of the campe	0	1	2
Feb. 13, 1641. Paid for trayning, when the mutiny was in Lam- beth, against the Archbishop	1	0	0
For making a bonfire at his Majesty's going to Parliament	0	1	6
1643. For bedding sent to Kingston for the soldiery, by vertue of a warrant from the Lord General	0	14	6"

The following entries, from the churchwardens' accounts of Eltham (Kent), further illustrate the same class of matters:—

	s.	d.
"1562. Paid to the boyes for the maypole	0	6
1566. Paid for watchinge the beacon on Shutter's Hill*	5	0
[This occurs several times.]		
1574. Paid to John Petley, for making the beacon	2	4
1583. Laid out for three arming girdells, and one girdell for a shefe of arrowes	3	4
Item for two bowestrings and one mache	0	4
1603. Paid for felling three trees for the butts,† and cutting them out	0	12

* Beacons were bound to be kept in use in many places, especially within sight of the coast. Attached to the service of them, were some of the men called "Hoblers," who are often named in old acts among the men-at-arms. They were men lightly armed, who rode on a light nag or "hobby," and so could instantly and quickly carry intelligence, if need were. See Rolls of Parliament, 21 R. II., Appendix, No. 3; 5 Hen. IV. No. 25; also Stat. 5 Hen. IV. c. 3, and 8 Eliz. c. 13.

† The "arrows" and "butts" named in these accounts, formed part of that system of accustoming all the people to the active use of arms and healthy recreation, which was the wise policy of the Common Law. In the extract already given from Aubrey, before, p. 497 *note*, it has been seen that shooting at the Butts was a usual part of the holiday exercises. Every

	s.	d.
For carrying the same timber	0	12
To Hamshere, for twò daies worck to make the posts and pails for the butts, and set them up	2	4
Paid to four men that digged turf, and laboured at the butts	4	0
For one hundreth and a half of nails	0	9
Paid in charges for their suppers, for all them that wrought at the butts, which ware three or four more than wee hyred, becas we would end them in one day	4	0
For the two bars for the butts, with the staples and iron work thereunto	2	2"

The accounts of the Parish of New Brentford (Middlesex) supply some useful illustrations, both of Parish Games, and of the mode of adding to the Parish Stock by collections made at Hock-tide and on other occasions. It will be observed how large the sums are that were thus collected,—the greater comparative value of money at that time being remembered.

"1618. Gained with hocking at Whitsuntide	£16	12	3
1623. Received for the maypole	1	4	0

The accoumpts for the Whitsontide ale, 1624:—

<i>Imprimis</i> , clear'd by the pigeon holes	£4	19	0
by hocking	7	3	7
by riffeling [raffling]	2	0	0
by victualling [those who paid for what they had at the feast]	8	0	2
	£22	2	9

1629. Received of Robert Bicklye for the use of our games	£0	2	0
Of the said R. B. for a silver bar which was lost at Elyng	0	3	6

Parish in the land is bound, by law, to have its Butts, to be thus used for the wholesome recreation of the inhabitants. This, which is the ancient law, was re-declared by 3 Hen. VIII. c. 3, and 33 Hen. VIII. c. 9. It was one of the regular articles of periodical inquiry;—"If the inhabitants of the Town (Parish) have made and continued their Butts, as they ought to do" (See Lambard's *Eirenarcha*, p. 481); "and if they exercise themselves with long bows in shooting at the same, and elsewhere, on the holidays and other times convenient" ('Boke for a Justyce,' p. 24 b). The reader will remember how, at the siege of the castle, in *Ivanhoe*, Walter Scott, true to popular habits, and therefore using natural similes, makes "the men complain that they can nowhere show themselves, but they are the mark for as many arrows as a *parish butt on a holy-day even*."

If the Butts were not well kept, the parish was presented and amerced. Presentments are often found made against Parishes for having the Butts in a ruinous state. Thus, in 1555, it was presented that the Butts at Edgware were very ruinous, and that the inhabitants ought to repair them; which was ordered to be done before the ensuing Whitsuntide. (Lysons, vol. iii. p. 157.) In Vestry Minutes, the repair of the Butts is a frequent order.

1620.	Paid for a pair of pigeon-holes [This refers to preparations for a game*]	£0	1	6
	Paid for 6 boules	0	0	8
	For 6 tynn tokens	0	0	6
1621.	Paid to her that was Lady at Whitsontide, by consent [of Vestry]	0	5	0
	Goodwife Ansell for the pigeon-holes	0	1	6
	Paid for the games	1	1	0
	Paid for a beast for the Parish use†	2	6	8
	Given to the French chapel by consent [of Vestry]	1	0	0
1628.	Paid for a drumbe, stickes, and case	0	16	0
	For 2 heads for the drumbe	0	2	8
1633.	Given to a knts. son in Devonshire being out of meanes‡	0	0	6
1634.	Paid Robt. Warden, the constable, which he disbursed for conveying away the witches	0	11	0
1634.	Paid for the silver games§	0	11	8
1643.	Paid to Thomas Powell for pigeon-holes	0	2	0"

Under the date of 1621, there occurs a highly interesting entry in the Vestry Minute Books of New Brentford. Large sums having been every year raised, as has been seen, by the "Ales," Plays, and Public Games, the funds thus made seem not to have been accounted for entirely to the satisfaction of the parish. Thereupon a Bye-Law was passed, ordering a full account to be given of all receipts and expenditure every year. The preamble of this Bye-Law has the following remarkable words:—

"That the inhabitants have for many years been accustomed to have

* So we have, in Chiswick (Middlesex),—"1622. Cleared at Whitsuntide, £5; paid for making a new payre of pigeing-holes, 2s. 6d."

† This is not a solitary example of such a remarkable illustration of Parish action. In Twickenham parish, for instance, certain lands were made chargeable with the finding of a Bull for the use of the Parish. In 1705, a Bye-Law of Vestry of the latter Parish ordered that, unless the tenant of the land found an able and sufficient Bull, the land should be let to some other person who *would* find such a Bull.

‡ One of the most pleasing things which an examination of old Parish records discloses, is the kindness shown, in frequent contributions made for those who have fallen into misfortune, even at a distance. A vast multitude of examples might be quoted. (*e.g.* *Bid-Ales*, p. 501 *note*.) The following may be taken as samples, in addition to the contribution to the French chapel and Knight's son above. Space, on this as other points, forbids fuller quotation:—

(Steeple Ashton.) "Collected on Whitsunday the 30th of May, 1596, for the townes of Penzance and others in Cornwall, 11s." (Ardely; Herts.) Aug. 1724. "A great fire lately happening at Wooburn, Bedfordshire, this parish voluntarily sent £3. 15s. 8d."

§ "Games" seems, in these accounts, to mean, articles used at those times

meetings at Whitsontide, in their *Church House*, and other places there, in friendly manner to eat and drink together, and liberally to spend their monies; *to the end, neighbourly society may be maintained*, and also a Common Stock raised for the repairs of the church, *maintaining of orphans, placing poor children in service*, and defraying other charges."

The Church House of New Brentford thus named, was, later, rebuilt by aid of a parish rate; and so late as 1805, £200 was voted to put it in repair.

The accounts of Chelsea (Middlesex) shall be the last now quoted, to illustrate the gains to the parish funds, made through the Public Games and similar usages. To these quotations, one illustration shall be added, of kindred parish payments:—

" 1594. Rec ^d . more of the women that they gott in hockinge*	0 33 sh.
1606. Of the good wyves their hockyng money	0 53 sh.
Of the women that went a hocking, 13 April, 1607	0 45 sh.
1611. Rec ^d . of Robert Munden that the men dyd gett by hock- ing	0 10 sh.
1670. Spent at the perambulation dinner	3 10 0"

The Parish of Fulham (Middlesex) preserves an inventory which furnishes us with a valuable illustration of the sort of armour which, as already named, every Parish was bound to keep in good order.†

"Anno 1583. Note of the armour for the parish of Fulham, viz. Fulham side‡ only. First, a corslet, with a pyke, sworde, and daiger, furnished in all points, a gyrdle only excepted. *Item*, two hargobushes [harquebusses], with flaskes and towch boxes to the same; two morryons; two swords, and

* Besides the games and sports and festivals that have been named in various quotations above made, there are many others incidentally mentioned in Parish records. For instance, in the accounts of Harrow-on-the-Hill (Middlesex) occur the following:—

" 1622. Received for cocks at Shrovetide	12s. 0d.
1628. Received for cocks in towne	19s. 10d.
out of towne	0s. 6d."

This was, no doubt, for the game, better honoured in the breach than the observance, of cock-fighting, or throwing at cocks. This was a game practised by Sir Thomas More! See Strutt's 'Sports and Pastimes,' pp. 283, 370 (ed. 1830).

† The accounts of the same Parish have the following odd entry:—"1578. Paid for the discharge of the parish for wering of hats contrary to the Statute, 5s. 2d." The statute referred to is 13 Eliz. c. 19, for protection of the worshipful company of "Cappers," and enjoins the wearing of woollen caps on Sundays!

‡ It has already been stated that parishes are sometimes divided into parts for separate management, called "sides." See before, p. 38.

two daigers, and two hanglesses unto two swords : which are all for Fulhame side only. All which armore are, and do remayne, in the possession and appointment of John Pulton of Northend, being constable of Fulham-syde the yere above wrytten. [Added, later] :—N.B. All sett owte into Flanders, anno 1585, by Rowland Fysher ; except one hargobusse, with flaske and towch boxe, one murryon, with sword and dagger, remayning in his hands.”

The “N.B.” added to the above entry, has this special value :—it proves that this armour was not had and kept for mere show, but that it was put to use ; each parish being thus identified, as already proved by the earlier records quoted in the first chapter, with the military strength of the land.

The following entries illustrate the obligations of the parish, in respect to providing means for prevention and help on occasions of public sickness, and for meeting its fatal consequences. In times when the “public health” is one of the colourable pretences made use of, to help the end of exterminating the Parish, as an Institution of self-reliance and self-action, such entries become of peculiar interest.

It is well known that the Plague appeared many times in London and the neighbouring Parishes, previous to its last great outbreak in 1665. The following quotations refer to its attacks, and the preparations taken by the Parishes to meet it.*

In the parish accounts of Putney (Surrey) we find :—

* Defoe, in his ‘Journal of the Plague Year,’ a work unquestionably compiled from the most trustworthy sources, justly calls attention to the admirable local management everywhere shown, throughout this sudden and terrible emergency. In one place he says :—

“Everything was managed with so much care, and such excellent order was observed in the whole City and suburbs, by the care of the Lord Mayor and Aldermen, and by the Justices of the peace, churchwardens, etc., in the out parts, that London may be a pattern to all the cities in the world, for the good government and the excellent order that was everywhere kept, even in the time of the most violent infection, and when the people were in the utmost consternation and distress.” (Brayley’s Ed. : 1835, p. 215.) In many places he remarks on the precautions and proceedings of the Constables and other Parish authorities. The truth of this might readily be demonstrated from other sources. The illustrations above quoted will be sufficient, in this place, to show that though, in our enlightened days of “progress,” we have “Boards of Health,” and other similar contrivances for destroying local action and self-reliance, in order to swell the ranks of ministerial patronage and dependence, our benighted fathers were able *effectually to do* what was needed, in emergencies to which nothing in our day has afforded the approach to a parallel.

“1625. Paid the carpenters for a barrow, to carry the people,
that died of the sickness, to church to bury them . £0 5 0
Paid for pitch, rosin, and frankincense* 0 1 0
Paid for a warrant from my Lo. General, for the women
of the towne to be brought before him, to be sworne
surchers 0 1 0
Paid to Comynge, for his charges going to London, to get
two women to come up to keep the sicke, the people
being all sicke 0 2 6
Paid to Fisher, for warding† the two houses shut up the
first weeke , 0 6 0”

In the accounts of the Parish of Wandsworth (Surrey) entries like the following occur:—

“1643. For burying divers persons who died of the plague . . £0 14 4
For strong waters for the sick several times 0 5 1”

It has been already shown, more than once, that the Parish is valuable as a means of settling differences and preventing heartburnings.‡ The forced conventionalism of modern society may be startled at the practical effect of this; of which it is enough to quote the following instances:—

“The fourth day of April, in 1568, in the presence of the whole parish of Twickenham, was agreement made betwixt Mr. Packer and his wife, and Hewe Rytte and Sicelye Daye, of a slander brought up by the said Rytte and Daye upon the aforesaid Mr. Packer.

“The 10 day of April 1568, was agreement made between Thomas Whytt and James Herne; and have consented that whosoever giveth occasion of the breaking of Christian love and charity betwixt them, to forfeit to the poor of the parish 3s. 4d.; being duly proved.”§

There are some entries in the Parish Books of Stoke Newington (Middlesex), which may be usefully quoted, as illustrating what has been already stated as to the Vestry dealing with estates in land. That Parish, being possessed of several acres of land, determined to build some houses thereon, and to let some foreign refugees dwell in them. The following occur:—

* These were burnt, as preventives to infection.

† That is, watching. See Defoe's account of the watchmen.

‡ Before, pp. 51, 229; and see Carew, and the Bishop of Bath and Wells, in *note* to pp. 499, 500.

§ An instance occurs in the records of Steeple Ashton, under date of 18 April, 1609, where a lawsuit which had been already begun, was settled “before the whole vestrie, being gathered together.” See before, p. 512. Thus completely is the truth of the statements of Carew and the Bishop of Bath and Wells, already quoted on this subject, able to be demonstrated.

“Aug. 15, 1709. Agreed, that this parish is willing to settle four families of the Palatines, to the number not exceeding 20 persons, at the rate of £5 per head, provided other parishes do the same.

“Sept. 26. Resolved that the Churchwardens and Mr. Thompson do agree with some person to build four houses in the Parish field.—Resolved, that Nathaniel Gould, Esq. do choose two families of the Palatines, to be inhabitants of two of the said houses.”

The main part of this land has been, for some centuries past, let to tenants upon various rentals. The houses above-named, with some adjoining ones, still go by the name of the “Palatine Houses.” Since the expiration of the last lease they have been re-let, and now produce more than £350 per annum. “The income arising from this estate has been long appropriated by the parish to the repairs of the church, as appears by an *Order of Vestry* of the year 1685.”* It remains still thus appropriated, and became the subject of debate in a very late case before the Court of Chancery.†

The following extracts are from the Records of the Parish of Ardley, otherwise Yardley, in the county of Hertford,—a purely rural Parish.‡ Most of them are of great interest. They are the more valuable, inasmuch as a principal resident in that Parish, during a large part of the time recorded in the Book from which these extracts are taken, was Sir Henry Chauncy, Sergeant-at-Law, a not undistinguished Lawyer, and the author of the well-known ‘History of Hertfordshire,’ already several times quoted in these pages. What was done at the Vestries recorded here, has the full weight of his authority. His name is found entered, as personally present at very many Vestry meetings. It is so in the first, and one of the most remarkable, of the entries contained in the volume of those Records from which these extracts are taken.

This volume of Records is marked “The Towne Book;”—one of the innumerable illustrations that might be given of the use, already stated, of the word “Town,” as merely equivalent

* Lyson’s ‘Environs of London,’ vol. i. p. 582.

† Att. Gen. v. Lover. Rolls’ Court, 14th Feb., 1857.

‡ I am indebted to my highly esteemed friend, the Rev. W. W. Malet, Vicar of Ardley, for the opportunity of examining this interesting Record. This Gentleman is named in a note to Sir Edward L. Bulwer’s ‘Harold’ (vol. iii. p. 395) as a descendant of one of the signers and “conservators” of Magna Charta. His lineage is best illustrated by his attachment to the noblest institutions of his country, and by his efforts to uphold their true action, in opposition to the modern encroachments of Centralization.

for "Parish." Ardley has always been a rural parish. Reference is often made, in this record, to an earlier one, called "the old towne book." The latter has, however, unfortunately been lost.

The entry above alluded to, relates to a Vestry meeting at which the general functions of local self-government are very distinctly affirmed and exercised; and where "Bye-Laws" of an important character are made. This entry, with others of later years, are as follows:—

"At a Convention of the Parishioners of the parish of Ardley, commonly called Yardley, in the County of Hertford, held within the said parish, on Thursday, the one-and-twentieth day of August, A.D. 1707, for the better government of the inhabitants there; where were present Sir Henry Chauncy, Knt., etc. etc.

"It is ordered that there shall be, from henceforth, a monthly meeting held on the first Sunday in every month, after evening service, for the Reliefe of the Poore, Repaire of the Church and the Highwaies, and the better Government of the said Parish, according to the directions of the law; and that every order shall be put into wrighting, and be fairly entered in a Booke kept for that purpose."

"Ordered, that no person or inhabitant shall, at any time or times hereafter, keep within this Parish [that is, on the Common Land in the Parish] above the number of one sheep to an acre, for every acre of Arable land in Tillage, which he or they shall hold at y^e same time within this Parish; upon the paine of paying two-pence for every sheep so kept above y^t number, for every time they shall graze in any of the comon ffields within the said parish."*

"Ordered, that Thomas Wright and Richard Overhall shall be Haywards for this yeare for this Parish; and shall execute these *Bye-lawes*; and shall be allowed all the said paines and forfeitures; and y^t these Orders shall be published next Lord's day at Church."

"Ordered, that the Surveyors of the Highwaies within this Parish, shall warne so many of the Parishioners as shall be necessary, to meete some day in Brads Lane, and sufficiently repaire the same."

"Ordered, that no person or inhabitant shall at any time or times hereafter keepe any Sheepe in any Lane within this Parish, where the Fence on one side is not his owne, upon paine of paying 2d. per sheepe for every time y^t such sheepe shall graze there."

4th Sept. 1707. "Ordered, that every person or inhabitant within this Parish, shall, at the next Parish meeting, bring in a particular of how many acres he has in Tillage within this Parish."

14 Sept. 1707. "Ordered, that every person or persons who have or hath assessed or collected for the King or Queen, by virtue of any Act or Acts of Parliament, any Rates or Taxes, or any Parish duetyes, within this Parish, since the yeare of our Lord God 1700, shall bring in the said Rates and Taxes, in order to be fairly engrossed in a Book to be kept for the use of the said Parish."†

* See case cited, p. 48 note; p. 528; and Chap. VIII. Secs. 5 and 7.

† See pp. 529, 530 and note*.

12 Oct. 1707. "Ordered that John Exton and James Grove, Constables for this parish, be allowed to make and collect a Rate of 2d. per pound, of the Inhabitants of the said Parish."

"It is ordered that the said John Exton and James Grove, Constables for this Parish, do forthwith pay (out of the said Rate of 2d. per pound) into the hands of Henry Sibley, Gent., and John Parker, Churchwardens for the said Parish, the sum of three pounds towards the reparaire of this Parish Church."

"Ordered, that the aforesaid John Exton and James Grove do forthwith pay, out of the aforesaid rate of 2d. per pound unto Henry Sibley, Gent., the sum of 9s. (videlt.) 4s. for a Booke for to enter y^e Orders made at y^e parish meetings, 4s. for drawing and engrossing the said Orders in the Booke, and 1s. spent at y^e same meeteing."

5 Jan. 1709. "Ordered, Thomas Everard being duly elected [Vestry] Clerk of this Parish of Yardley, by y^e majority of y^e votes of y^e parishioners now present at this Convention, [that he] doe give his constant attendance at all Parish Conventions, to write all such orders as shall be then and there made, and to engross y^e same fair in y^e Town booke [*i. e.* vestry minute-book] appointed for that purpose ; as also to write all Parish Rates that shall be granted, and to be assistant in taking y^e accounts of y^e several and respective officers of y^e parish ; and to write y^e returns to y^e justices of y^e peace at their Petty sessions ;—he being allowed by y^e Parish twelve shillings yearly for his salary for writing y^e same ; and y^e said 12 shillings to be payed him by y^e overseers of y^e poor, —three shillings a quarter,—from y^e date of this Convention."

23 April, 1710. "It is ordered that, upon the complaint of Gooddy Wheatly,—that John Dellow, a poor inhabitant of this parish, holds a small cottage of Thomas Wheatley of £1 per year, and was in arears £1. 6. 0 at a Lady day last past,—and it is agreed between y^e parishioners and Thomas Wheatley, that the Parishioners will pay him ten shillings, in part of y^e arrears, if Wheatley will forbear to prosecute Dellow, and for Dellow to pay five shillings more before he leaves the house, and to quit his house before midsummer."

10 Sept. 1710. "It is ordered that John Kirby, overseer of the poor of this Parish of Yardley, do retain Mr. Robert Markham, Counsell for y^e parishioners of this parish, at y^e next quarter sessions of y^e peace to be holden for this County."

24 May, 1711. "Ordered, that no inhabitant of this Parish shall take an apprentice without y^e consent of a Convention of Parishioners. If he doth, he shall be double Rated."

8th July, 1711. "Ordered that Wm. Parker, Constable of this Parish, be allowed to make and collect a rate of 2d. per pound, to defray y^e charge of his Office for the present year."

5 August, 1711. Whereas it was agreed at a Parish meeting, held on Sunday y^e 8th day of July last past, that Daniel Joans, Clarck to Sir Hen. Chauncey, should give his attendance at y^e assizes, in y^e behalfe of y^e Parish, to speak with y^e Clarck of y^e assize, to move the Court that our Parish might be allowed y^e charges for conveying John Hanscome to the Gaol at Hertford ;—

"It is now ordered, that y^e said Daniel Joanes be allowed his reasonable charges for giving his attendance, and to be paid y^e same by William Parker, Constable."

13 Sept. 1711. "Whereas, there was an order made that Wm. Parker,

Constable, should make and Collect a Rate of 2d. per pound, to pay vagrant money to Mr. Godfrey, Chief Constable, and also to pay the last Constable y^e money which he was out of pocket ;—

“It is now ordered that y^e said Wm. Parker doe forthwith pay to Thomas Hillyard, Late Constable, y^e summe of one pound three shillings and ten pence half-penny.”

2 August, 1713. “Whereas it does appear by y^e poors Rates, at a Convention of y^e major part of y^e inhabitants of the Parish of Ardeley, held for y^e Reliefe of Poore there, on Sunday, y^e second daye of August, 1713, that y^e charge of y^e parish is much encreased by y^e undue practices of those owners and Inhabitants who have brought into the Parish several strangers, and have also converted several farm Houses into new erected cottages for their habitations ; by which means they multiplyed the Poor and encreased the Charges of this Parish, contrary to y^e statute in that case made ; we y^e churchwardens and overseers of y^e poor, and y^e major part of y^e inhabitants of y^e said Parish now assembled together for y^e reliefe of y^e Poor, doe hereby order and ordaine, that if any Owner, Tenant, or Inhabitant of this Parish shall hereafter take or receive into any of their Houses any strangers or persons whatsoever, who are likely to become a charge to this Parish, without y^e consent of y^e major part of y^e parishioners, every such offender shall be charged to y^e rates of y^e Poor, over and above his proportion to y^e neighbours, to such overgrowing charge when it shall happen, without respect to his ability of the land he occupies, but according to y^e damage and danger he bringeth to the Parish by his own folly.”*

Same date. “Whereas there has been a complaint made, by y^e Inhabitants of this Parish, that y^e said Parish does sustain great damage by those persons which come in by a certificate,† by over burthening y^e common, which they have no right to ; and likewise hinder y^e poor Inhabitants, by taking y^e benefit of gleaning in the several and respective fields belonging to y^e said Parish : therefore, It is now Ordered, at this Convention, held on Sunday y^e 2nd day of August, 1713, by y^e major part of y^e parishioners here present, that the hayward‡ doe give notice to them, and every of them, to take their

* See a Bye-Law to precisely the same effect, in Steeple Ashton, before, pp. 514, 515. Each of these Bye-Laws is directed strictly against those, who, for selfish gain, and irrespective of the wants and welfare of the Parish, would make money by offering temptations to a less able class of occupiers, not needed as labourers.

† The 13 & 14 Car. II. c. 12, which empowered the removal of persons alleged to be *likely* to become chargeable to any parish, contains a clause in ease of this liability to removal, in the case of any person having a *certificate* of inhabitancy, etc., in another parish. Several Acts modified this ; but it has become practically, though not legally, obsolete, by the repeal of the power of removal on the ground of *liability* to become chargeable, by 35 Geo. III. c. 101. The above bye-law is grounded upon the correct principle, that, being only temporary sojourners, by the express terms and conditions of their certificates, and not actual inhabitants, such persons could have no right to the use of the Common which belonged to true Inhabitants and Parishioners. See before, p. 463.

‡ See before, p. 192 *note*. Compare also, p. 526, and *note* *.

Cattle off of y^e Common, or else they will be impound. This order is to be set upon the Church door y^e next Sunday."

7 April, 1715. "Whereas Wm. Barefoot, neare y^e Towns end in Hertford, owns some freehold lands at Datchworth, in y^e possession of Thos. Kimpton at Datchworth, shopkeeper, to be sold, containing ten acres, all enclosed, lying neare y^e Mote-house;* y^e Rent is five pounds per annum: It is ordered, that Mr. Henry Sibley and John Parker, Jun., doe go to enquire after this purchase at Datchworth, which is here mentioned, or any other place to be bought for y^e use of the poor, and to give account to y^e parishioners at Easter."

The Parish appears to have approved and determined on the purchase; for soon occurs the following:—

May 12, 1715. "Ordered that y^e churchwardens and overseers of y^e poor doe, at y^e Request of y^e parishioners, goe to y^e severall and respective persons which have moneys of y^e Parish in their hands,† and make demand of y^e same; y^e Parish having now an opportunity to lay out y^e same in a purchase for the security of y^e same: and they are to give an account to y^e parishioners at the next parish meeting."

The following are Orders of the Trustees of certain Parish moneys of Ardley, made the 4 Jan. 17 $\frac{19}{20}$. They were obviously made, as it has been shown that all such are bound to be, with the assent of the Vestry; for they are entered regularly in the Vestry Minute-Book, and bear the signatures of the Parish Officers, as well as of the Trustees themselves:—

"We do hereby nominate, make, appoint, and constitute Thomas Tipping, or vic^r, Receiver of all Rents and Moneys (and of all arrears of either) which are due or shall become due to us y^e trustees, for y^e use of y^e poor of Yardley, Hertfordshire, and do impower him to disburse such money and Rents, received for y^e use and benefit of the poor aforesaid, as directed by y^e Donor or Donors, except anything in any will contained to y^e contrary; and where no will does specify y^e intent of y^e benefactor, there he is to observe and follow our Orders and Directions, which we now give and make in y^e eighty-ninth page of this Book.

"Item, we do agree and resolve that he the said Thomas Tipping shall continue receiver and distributer of y^e said money and Rents and Charity, no longer than y^e majority of y^e trustees shall think proper and convenient.

"Item, we order that y^e said Receiver shall, once every year, in Easter week or in the month of April, on some certain day, when y^e majority of y^e trustees shall give him 3 days' notice, produce and lay before them an account of what he shall have rec^d and disbursed,—and upon refusal or neglect he shall cease to be receiver."

17 Feb. 1745. "Mr. Larkin delivers in the Land Tax Receipts from the year 1717 to the year 1740, and they are all in the Town Chest."

12 June, 1746. "Mr. Smith and Mr. Larkin, Assessors and Collectors for

* That is, *Moot-* or *Court-house* of the Hundred.

† See before, pp. 433, 506 note, 514.

the Land and Window Tax, deliver in all their receipts to Lady-Day last, 1746, and they are all in the Town Chest.”*

Among the regular disbursements, such as the following are often found :—

“1768. Paid towards the Levy money, and also in part of the
Shire-house £11 1 0½”

It will be useful to bring illustrations of Parish Records down to the present time. For this purpose the Parish of Hornsey, in the County of Middlesex, shall be taken. Some miscellaneous extracts shall first be given; which shall be followed by others, having more specific relations, grouped together.†

6 June, 1742. “Ordered, that George Frost and John Willmott, present Churchwardens of this Parish, do proceed in the most legal manner to compel Thomas Noch and William Smith to serve the office of Constables for the said parish; being elected by the Jury at the Court Leet, held 20th April last.”‡

27 Oct. 1749. “Whereas, upon examining this Book, it does appear that a false and fraudulent minute is made and entered in p. 38, dated the 17th day of Feb. 1748; which entry we think a great imposition upon this parish, no such minute being proposed, agreed to, or entered at the vestry on that day;—We therefore desire that the Vestry Book may be delivered to Mr. John Brettell, one of the Attorneys of his Majesty’s Court of King’s Bench, in order that he may take the opinion of Sir John Strange, or some other eminent counsel, what measures are proper to be taken to punish such person that has presumed to make such false and fraudulent entry in the said Book. And it is further ordered, that the expense of that opinion and the proceedings thereon be defrayed by this Parish.”

30 July, 1750. The Overseers are ordered to get a rate, already made, formally “allowed;”§ and, in case they neglect

* The last two entries, and many others, regularly made, like them, are in pursuance of Bye-Law of 14 Sept. 1707, already quoted. They are put here, distinct, to illustrate that Bye-Law. The Assessors’ and Collectors’ Security should be approved by the Parish. The Clerk to the Commissioners of Revenue usually sends, on a fresh appointment, to the Churchwardens, asking if the security offered is approved. The Churchwardens ought to lay the communication before the Vestry. The above matter is one which is very important to be taken cognizance of by the Vestry. If enforced by every Parish, it would do much for the security of the Public Revenue, as well as check individual remissness. See particularly hereon, after, Chap. VIII. sec. 7.

† Some items of the *accounts* of this Parish have already been quoted, in illustration of different points. See pp. 98 and 235; also p. 236. The same accounts illustrate the habit of Parishes to bury those dying within their bounds (see before, pp. 154, 448). Thus I find in these accounts :—“1664. Burial of the Welshman that dyed in the towne.” 1668. Burying “a stranger that dyed in Sow-wood Lane.”

‡ See before, p. 125.

§ See before, p. 150; and after, Chap. VIII.

t, or the Magistrates refuse to confirm it, the Churchwardens are instructed,—

“To make a rate upon the said occupiers and inhabitants of the said Parish, not exceeding 6d. in the pound, to defray the expense they shall or may be put unto, in *compelling the said Overseers and Justices, or either of them, to do their respective duties, or show good cause, if they can, to the contrary.*”

17 March, 1784. “It was unanimously agreed that I. B. and M. H. have part of the Common on Fortress Green, Muswell Hill, on their paying after the rate of thirty shillings per acre, at 24 years’ purchase, allowing them two years’ purchase for the fencing; and the money arising from the above sales shall be paid into the hands of the Surveyor of the Highways for the time being; to be by him applied towards mending the Roads in this parish; * and, in case any overplus shall arise, it is to be paid into the hands of the Overseers of the Poor, for the use of the said Poor.”

A vast number of other entries occur as to sale of the Waste Land by the Parish;—all the waste land thus sold being, in fact, strips, more or less broad, lying at the sides of the roads. Illustrations of the same thing might have been given from other Parishes: but this will be enough. What relates to this has been already explained in treating of the Enclosure of Commons.

17 Nov. 1785. “Ordered, that a Committee of Messrs. [names given] do attend to inspect into the writings of the Parish.”

Certain allowances for refreshment are, very properly, ordered, for particular occasions of tedious business; to which is appended the following remarkable, but very right, bye-law:—

6 May, 1790. “And it is further resolved, that not any one in future shall be permitted to partake of any part of the above allowances, *unless they attend the respective Vestries, to do their duty as parishioners*;—the Vestry Clerk, Parish Clerk, and Beadle excepted.”†

The subject of enlargement of burial-grounds has already been treated of.‡ The following is an example of how Parishes

* What has been explained before, pp. 467, 468 and *note*, as to the enclosure of roadside wastes, and the obligations thus brought on those who enclose, is here illustrated. The sum to be paid by the encloser in the above Order, is of the nature of a *composition*, relieving him from the liabilities he would otherwise incur by enclosing. The consent of the Vestry is clearly necessary to this composition. And it is entirely correct that the sum thus paid, or a sufficient immediate part of it, should be applied as the above extracts show to have been in this case.

† I must request particular attention, on this subject, to the quotations and illustrations in ‘Local Self-Government,’ pp. 179–181.

‡ Pp. 255, 449.

have heretofore seen to and accomplished this important object, without any need of modern "Burial Acts."

30 August, 1792. "This Vestry examined the sexton; who reports that there is not room for him to dig a fresh grave without disturbing other corpses."

18 Sept. 1792. "Resolved, that a Committee, consisting of the Churchwardens [etc.], be appointed to make the necessary enquiries concerning the same, and report to the next Vestry."

13 June, 1793. "At a Special Vestry held for the parish of Hornsey, on Thursday the 13th day of June 1793, To consider of enclosing a piece of ground for to enlarge the present church-yard :—

"Resolved unanimously, That the Rector and the Churchwardens do apply to the Lord Bishop of London [the Lord of the Manor] for leave to enclose a piece of the waste land in front of the church,—viz. in length 200 feet, breadth at the east end 53 feet, and at the west end 45 feet, for to enlarge the present churchyard."

Obstructions arose, from unexpected quarters, to the immediate fulfilment of these arrangements. But those obstructions were ultimately overcome, and the arrangements carried out; and the Parish now has and uses this burial-ground, without any of that cumbrous machinery or cost which modern burial Acts entail. Such is the difference between Common Law and Statute.

22 Sept. 1821. "Resolved, that a Committee be appointed to examine and inspect the Books and papers in the Parish Chest, and to make a list of the same; and that such Committee be" [names given].

The following is highly important.

19 Nov. 1834. "Resolved, that any inhabitant liable to, and being elected to, the office of Churchwarden, Overseer, and Surveyor of the Highways, of this Parish, in case of refusal to serve such office, do pay the respective fines following: namely;—On refusal to serve the office of Churchwarden, the sum of £25. On refusal to serve the office of Overseer, £25. On refusal to serve the office of Surveyor, £15."*

25 Oct. 1849. "That a Committee be appointed to inquire into the Parochial assessment, and report on the same at the next vestry."

Instances of Rates have been already quoted in other Parishes as well as one in this. Others occur. Thus :—

12 Dec. 1793. A rate of 1s. in the pound is made, to pay (among other things) the Proctor's bill.

30 April, 1795. Certain persons having refused to pay the last-named rate the Churchwardens are directed to take Sir William Scott (Lord Stowell)'s opinion as to the power of its enforcement. It is reported to the Vestry tha

* See before, p. 218.

he had recommended application "to a learned civilian ;—*whose opinion was, that the said rate could be enforced.*" The Churchwardens are, therefore, instructed to enforce it.

16 Feb. 1797, 30 Dec. 1798. Some persons still decline to pay : the law is appealed to : a Vestry offers to compromise, but the refusers are obstinate : the suits are prosecuted : and the end is, most rightly, that the refusers have to pay, not only the rate itself, but all the taxed costs of the suits.

1 March, 1811. "Resolved unanimously, that a rate of fourpence in the pound be made and assessed on the several parishioners and inhabitants of this Parish, towards purchasing two [fire] engines for the use of this Parish," etc.

These fire-engines have, ever since, been maintained and served as part of the regular Parish Charges, voted every Easter.

Bills in Parliament are considered ; and, if necessary, opposed. Thus :—

22 March, 1789. "Resolved unanimously : that Mr. Hodgson be desired to oppose the present Bill, now in the House of Commons, for making a Turnpike Road from Newington Green through the Green Lane leading to Bush Hill, in the most eligible manner he can for the benefit of the Parish."

14 April, 1789. A Committee is appointed "to settle and agree with the trustees of the Stamford Hill Turnpike, respecting the Bill now pending in the House of Commons."

16 Sept. 1790. Gives account of "attendance on the House of Commons, in opposing the Stamford or Green Lane Road Act ; wherein they claimed £56 per annum ; which was reduced, by the opposition, to £20 per annum."

23 May, 1814. "Resolved : that this Parish do resist the Bill now pending in Parliament, for extending the Sewer Rate for the Finsbury and Holborn Division to the Parish of Hornsey."

17 Jan. 1822. A meeting was called "to take into consideration the notice lately given by the Commissioners of Sewers, of an intended application to Parliament, for an Act for enlarging the powers and extending the jurisdiction given to them by former Acts ;" and it was "Resolved : that Mr. T. do watch the progress of the Bill intended to be brought before Parliament by the Commissioners of Sewers, pursuant to the notice given by them, and do take such steps to oppose the same, on the part of this Parish, provided any attempt is made to affect the interests of the inhabitants thereof, as he may deem necessary."

Items of account for parish business, touching the corporate affairs of the parish, are frequent. Thus :—

16 Sept. 1790. Messrs. Hodgson and Hardcastle's Bill for "attendance in the House of Commons, in opposing the Stamford or Green Lane Road Act," —£88. 17s. 4d.—Ordered to be paid.

11 Oct. 1793, 12 Dec. 1793. Proctor's bill, for obtaining a faculty, ordered to be paid.

27 July, 1794. Mr. Hodgson produced three Bills for contending with the

Parishes of St. Mary, Islington, and Pancras, to repair Maiden Lane, Cross Lane, and Duval Lane. They were paid.

"Maiden Lane Bill.	£38	15	10
Cross Lane	6	4	4
Duval Lane	52	6	4
	<hr/>		
	£97	6	6"

28 April, 1803, 20 Oct. 1842 (and many other dates). "Resolved unanimously : that the whole expense of the day [of perambulating the Boundary of the Parish] be defrayed by the Parish."

Encroachments are firmly resisted and abated. For example :—

21 June, 1811. A Committee was appointed "to inspect the boundaries of Finchley Common belonging to this Parish, as the Finchley Parish have encroached on our rights of that Common."

28 June, 1825 ; 18 August, 1825 ; 14 Nov. 1825. Action was taken on encroachments made on a certain public pond at Muswell Hill ; and the *Surveyor's accounts were refused to be passed, because he did not obey the orders of the Vestry in the matter.*

28 Aug. 1826. A Vestry was held for the express purpose of "*taking into consideration the several encroachments which have been made, and are now making, upon the Common Rights of this Parish ; and to adopt such resolutions as may be deemed expedient thereupon.*"

The Drainage, etc. of the Parish receives frequent attention. Numberless cases of Nuisances are presented, and ordered to be removed. This was long before "Public Health Acts" and "Nuisances' Removal Acts" were thought of. The following examples are enough :—

22 Sept. 1808. Several complaints of divers nuisances and obstructions of the Watercourse in Southwood Lane being made to this Vestry, it was "Resolved : that a Committee [named] do inspect into, and remove, the said Nuisances."

28 March, 1833. "Resolved : that the Constable be desired to present the several persons following, for Indictment for a nuisance, arising from the drains leading from their respective houses into the drain on the side of the High Road." Eleven names and places follow.

15 Oct. 1844. A Vestry was held "to take into consideration [among other things] the state of the drainage of this Parish ;" and steps were taken accordingly.

20 May, 1851. After the presentation, by a Committee specially appointed, of a Report on the Drainage of the Parish, and on the proper remedies :— "That Messrs. [names given] be and they are hereby appointed, a permanent Committee (*subject to removal or re-appointment by Vestry on each succeeding Easter Tuesday*), empowered and instructed to carry out the objects named and referred to in the Report this day presented to the Vestry on the subject of Public Health and Drainage, and in the manner therein men-

tioned : and the said Committee is hereby empowered and instructed to put in operation within this Parish the powers which by law, or by any Statute for prevention or removal of Nuisances, they may do, for the more effectual carrying out of the objects and purposes named in that Report.”*

Some Minutes of this Parish, relating to the management of Parish Charities and funds, have already been quoted.† The following are also highly illustrative :—

1 Oct. 1789. “Resolved unanimously : That, in future, no churchwarden or overseer of the poor do presume to place or put out any child or children with the trust or legacy money left to this parish, but such only whose father is now, or at his death was, a parishioner of Hornsey Parish.”

“It is further resolved that, in future, no person do receive any part of the money left to put poor children of this parish apprentice, with his own child.”

16 Sept. 1790. “That the Vestry Clerk do state the Waste Land account, agreeable to the form produced.”

12 Dec. 1793. A trustee of one fund had refused to comply with the wishes of the Parishioners. After reciting the facts, it is ordered that :—

“If he does not think proper to comply with the said determination, it is the opinion of this Vestry, that a Vestry should be called for the nominating and appointing a fresh Trustee for that donation, in the room of the said Mr. G. B. ; who is required to settle the said account up to the 1st day of Jan. 1794 :—and that the Vestry Clerk do acquaint him with this Resolution.”

Same date. “That the whole of the Bread Donations, from and after the 1st Jan. 1794, be paid into the hands of the Senior Churchwarden for the time being, by each of the said Trustees ; and by the Churchwarden to be duly accounted for in the year before the 1st Jan. in every year, in a separate and distinct account ; and that, from the said 1st Jan. 1794, the Beadle for the time being do keep a particular account of the Bread delivered at the Church, with the date of delivery, number of Loaves of each sort, and the Market Price ; which are to be delivered from the said period in Quarterns, Half Pecks, and threepenny loaves ; which the Beadle for the time being is strictly enjoined to weigh, and to keep an account of all under and over weight : and that in future the said Bread Donation account shall be settled once in every year,—and that, in the month of January, at a meeting held by the Trustees and Churchwardens for the time being, and any Inhabitant that may think proper to attend the same ; of which settlement 3 days’ notice at least be given in the Church on Sunday morning, prior to such meeting.”

26 Aug. 1802. A Committee was appointed to value and mark out unenclosed Waste Lands : and it was also “resolved unanimously, That the

* It will be seen that this is more than four years before the “Nuisances’ Removal Act, 1855,” was passed.

† Before, p. 286.

Committee appointed shall also view and value any enclosure that has been taken in and not paid for.”*

15 Jan. 1810. “Resolved, That all Waste Lands taken up at the Court, belonging to this Parish, shall be at and after the sum of £80 per acre.”

“That those gentlemen who have enclosed the Waste Lands, and have not paid for it to the trustees of the Waste Land Fund [formed subsequently to the Bye-Law of 17th March, 1784, already quoted], are to be charged after the said rate of £80 per acre.”

30 Dec. 1813. “That all boys apprenticed hereafter to [certain masters], shall receive £7 by way of gratuity to the master at the end of one year, and not earlier;—over and above the £5 given by the parish from [a certain fund];—on the approval of boy with master and master with boy;—both appearing at Vestry prior to such sum being given, and with perfect approbation of such Vestry present.”

22 Sept. 1817. “Mr. M. having submitted a map of [certain] pieces of ground, together with a plan and elevation of six cottages proposed to be built on the last-mentioned pieces of ground; and also a plan and elevation of a cottage proposed to be built on the piece of ground near the Alms Houses in Southwood Lane;—Resolved, That the business be referred back to the Committee appointed to carry the business into execution; and that so much of the said fund [Waste Land Fund] (not exceeding £600) be appropriated for such purpose.”

11 June, 1818. Report of Committee for erecting Cottages in Southwood Lane; stating that seven Cottages [*i. e.* the six and the one, all named above] had been erected; “for which purpose they had appropriated the sum of £600, the produce of the Waste Land Fund.”

3 Oct. 1820. “That no repairs be undertaken on the parish account [in any of the Parish Cottages], exceeding the sum of £5, without the sanction of Vestry.”

12 July, 1826. “That a Committee be appointed to investigate the various charitable donations made to the Parish at different Periods, and to inquire into the application thereof: and that the Parish officers do permit inspection of the requisite documents, and lend their assistance in affording the necessary information.”

30 March, 1831. “That the Vestry Clerk do write to Mr. W., and inform him, that the Vestry alone has the right of filling up any vacancy that may arise in any of the Parish Cottages.”

There has been shown to be nothing more important in Parish affairs than due care of the Highways and of all footpaths.† The present extracts from Parish Records shall therefore be closed with the following, out of many more, illustrations of action on this matter:—

10 April, 1787.—“Ordered: That the Surveyor do wait on Mr. Booth, who hath removed the stile, and turned the path, in the field leading from Highgate to Maynard Street, to require him to replace it in its former station; and, also, to open the path from Crouch End, facing the pond, over the fields, leading to Highgate.”

* See before, p. 531 note.

† Before, pp. 111, 354–356.

17 Nov. 1791.—“Ordered: That the Vestry Clerk do give notice to the Surveyors of the Highways for the Parish of St. Mary, Islington, that, unless they do repair the dangerous parts of the road in Duval Lane [etc.], this Parish must be under the disagreeable necessity of indicting the said road.”

30 Aug. 1792.—“Ordered: That the Vestry Clerk do wait on Messrs. Hodgson and Hardcastle, for them to put the Act in force against the Parishes of St. Mary, Islington, and St. Pancras,—or *any other Parish* that the lane known by the name of Maiden Lane, or Black Dog Lane, leading from Highgate to Kentish Town and Battle Bridge, may be in,—if they refuse to repair the said lane and make it passable for carriages.”

22 Sept. 1806.—“Ordered: That the Vestry Clerk do write to Mr. H., to give him notice that, if he does not open the original footpath leading to London, near the Sluice House, which he has stopped, in this parish, and remove the dunghill, they will indict him at the next Quarter Sessions.”

4 July, 1808.—“Ordered: That the footpath leading from Highgate to Hornsey Wood House and London, and also from Mount Pleasant to Hornsey Church, be opened and made level.”

19 May, 1815.—A vestry was held “to take into consideration the subject of the encroachments made on several of the public carriage-roads within this Parish, by persons enclosing under the Hornsey Enclosure Act; and to determine on the measures to be pursued in consequence thereof;” and prompt measures were accordingly taken.

26 Jan. 1816.—Another Vestry was held to consider further encroachments; and the Constable was ordered to require no less than fifteen enumerated cases of nuisance and obstruction to footpaths to be removed, and to take legal proceedings to enforce the same; while, at the same Vestry, the Surveyor of Highways was instructed to take the necessary steps for the removal of eleven enumerated encroachments.

16 Feb. 1818.—Active measures were adopted to improve “the state of the footpaths,” whose bad condition is declared to “deprive the inhabitants of a practicable accommodation, materially affecting the health and comfort of the inhabitants, especially females and children.”

18 May, 1818.—Communications having been received relative to encroachments made by the *Highgate Archway Company*, it was “Resolved: That Mr. P., the Surveyor, be requested forthwith to throw down the fence, and complete the road and footpath as it originally ran.”

6 Nov. 1823.—A Vestry was called “to consider what further proceedings should be taken, to resist the diverting of the footpath leading across the field called Paradise Field, in this parish, to Paradise Row, in the parish of Newington.” Prompt and efficient steps were accordingly taken.

20 Jan. 1825.—A Vestry was held “to consider a proposed alteration by Mr. G., of certain footpaths, and also as to certain other footpaths proposed to be diverted.” Long proceedings took place, in this and several following vestries; the result of which was, that certain alterations were agreed to, on certain terms; others were altogether rejected.

22 Sept. 1827.—A nuisance, by a shed put up, having been erected near public footpath, it was “Resolved: That the Vestry Clerk do give notice to remove the same within seven days; and inform him that, unless he comply therewith, an indictment will be prosecuted against him.”

21 May, 1829.—Mr. J. B. attended the Vestry to ask leave “to divert the lower end of the Shepherds’ Fields footpath, so that it should run in a line

with the path leading to Middle Lane ;" which was agreed to, on proper terms. Instances of the same kind are numerous.

This important branch of Parish Action, so essential to the maintenance of the Common Rights of the General Public, as well as those of every Local Public, cannot be more appropriately concluded than with the following Report, containing a very practically instructive account of proceedings in a case in which the odds were heavy against the contesting Parish ; but in which, notwithstanding, the Common Rights of the Parish were successfully vindicated, by firm and constitutional action, wholly through the means of that Institution.

"At a Public Vestry holden, pursuant to Summons, on the 20th day of July, 1852, in Hornsey Church, the following Report was read,—and, by unanimous vote of Vestry, received, adopted, and ordered to be printed and circulated.

"To the Inhabitants of the Parish of Hornsey, in Public Vestry assembled, this 20th day of July, 1852.

"YOUR COMMITTEE,—to whom, at a Vestry holden on the 24th day of October, 1850, it was referred to ascertain the rights of the Parishioners of this Parish in respect to certain Public Footpaths, concerning the stopping up and obstructing of which complaints had been laid before the said Vestry ;—and to whom, by divers orders of Vestry of later dates, it was further referred to take such steps as seemed most calculated to maintain the Common Rights of the Parish in respect to certain of such Public Footpaths ;—

"Do now Report as follows :—

"Definitive results have been now accomplished by your Committee. That the character and value of these may be properly understood, a short review of the proceedings taken since the date of your Committee's appointment, will be the most proper and useful course.

"Appointed on the 24th October, 1850, your Committee laid before a Vestry, holden on the 23rd November then next, a Report, in which the particulars of several obstructed Public Footpaths were stated, and recommendations were made in respect to each. Those recommendations the Vestry did not then authorize to be carried out, except as to one of the said footpaths, and as to one point in reference to another. [The places and points are then explained by reference to plans annexed.] The carrying out of the recommendations then sanctioned, has produced the results which your Committee have now to report. It remains with the Vestry to determine whether any of the further recommendations of the Report of 23rd November, 1850, shall be sanctioned. Your Committee still feel, as expressed in that Report, the full extent of the 'importance, and the duty which devolves upon the Vestry of this Parish, of taking prompt and effectual measures for maintaining the Common Rights of the Parish.'

"The two footpaths above referred to, were two which had been obstructed by the most serious of any opponent with whom the Parish could have to deal, in vindicating the Common Rights of the Parishioners. They were also, in themselves, footpaths of great importance to the Convenience, Health, and Enjoyment of the Public. It was well fitting, therefore, that

the position of the Parish should be first asserted in resistance to these particular obstructions. The obstructions in question had been raised, in two footpaths going out of Tottenham Lane, by the works of the *Great Northern Railway Company*.

"Your Committee proceeded, under the sanction given to their recommendations by the Vestry, to require the Great Northern Railway Company to respect and provide for those Common Rights of the Parish of Hornsey, and of the Public, which, without compensation or substitution, and not deeming resistance likely, they had set at naught.

"The encroachments of the Great Northern Railway Company, it will be seen, became agitated, and redress demanded, at the close of 1850. Instead, however, of heeding the just claims made by your Committee, that Company caused certain clauses to be inserted in one of the Private Bills which they had prepared for the Session of Parliament of 1851; by which clauses it was sought to legalize those encroachments; and by which, had the attempt succeeded, the two footpaths in question would have been for ever stopped up and lost to the Public, without compensation or substitution, under the sanction of a private *ex post facto* Act of Parliament!* Your Committee cannot but emphatically remark, in passing, upon the obvious mischiefs and unconstitutional character of a system of procedure, under which such deliberate violations of Public and Common Rights can be perpetrated or attempted. Seldom do the advertised notices of such Bills meet the eye of those who may be affected. In the present instance they fortunately did so, though the Title of the Bill was so shaped as entirely to disguise the objects thus sought to be accomplished by it. Your Committee forthwith directed a petition to be lodged, in the usual form, against the Bill in question. In consequence of the very short time allowed by the *Standing Orders* of the House of Commons for lodging Petitions against Private Bills,—and which must always operate with peculiar hardship in such cases as those of opposition by Parishes,—technical difficulties arose in the way of your Committee being heard, in the usual manner, in opposition to the Bill in question, before the Committee of the House of Commons to which that Bill had been referred. Your Committee thereupon made a direct appeal to the House of Commons itself in the matter. They prepared and printed, on the 18th March, 1851, a paper entitled, '*Case of the Parish of Hornsey.*' In this document were set forth the actual merits of the question, and the claim of the Parish of Hornsey, of Right and at Common Law, to be heard before the House of Commons in vindication of their Common Rights. This document your Committee circulated among all the members of the House of Commons, and elsewhere in several important quarters. Without entering further into details, it is sufficient to add, that the result was, that members of your Committee did personally appear before the Committee of the House of Commons to which the Bill of the Great Northern Railway had been referred; vindicated, before that tribunal, the Common Rights of the Parish of Hornsey; and were successful over all the obstacles thus thrown in their way; while the Great Northern Railway Company were defeated in their attempt at the *ex post facto* legalization of wrong-doing, and compelled, by the Committee, to strike out of their Bill both of the clauses which they had inserted, referring to

* This is what is being continually done in Railway Acts, through the highly culpable negligence equally of Parliament and Parishes.

footpaths in the Parish of Hornsey. They were compelled, there and then, to insert in the Bill an obligation to provide, in place of the obstructed part of one of those footpaths [explained by reference to plan annexed], a good and sufficient substituted footpath [explained by reference to plan annexed]; and as to the other, the circumstances of which were different, the question was left to be settled in accordance with the existing Law, unprejudiced and unfettered by any interference founded on the partial and imperfect information then necessarily before the Committee.

“It is proper to state that, by the course these proceedings thus took, much expense was saved to the Parish, as well as the end probably even more effectually accomplished than it would otherwise have been.

“Defeated thus before the highest tribunal known to the English Constitution, and having found that the parish of Hornsey dared, and was able, to vindicate the Public Rights even within the walls of Parliament, the Great Northern Railway Company became more sensible of the necessity of dealing with the Committee as with men who did not mean to be defeated. That no delay might ensue, an Indictment was immediately preferred against the Great Northern Railway Company, in respect of the footpath last above-named. On that Indictment the usual proceedings were taken. The Company, upon this, thought fit to open negotiations. It is unnecessary to detail the form these took,—how they were protracted,—and how the time and efforts of the Committee, and of a special Subcommittee which was appointed in reference to those negotiations, were trifled with. After long delays, and frequent promises, the draft of a deed was, near the end of January of the present year, sent to the Vestry Clerk of this parish by the Solicitors of the Company. This deed professed to be for the settlement of the question; but it really consisted of nothing but an evasion of the whole matter. The Subcommittee, accordingly, in a letter dated 23rd January, 1852, and addressed to the Solicitors of the Company, promptly declined to assent to the terms proposed in that deed, or to assent to any such deed whatever; and, to prevent further delay or evasion, sent, in the same letter, the outline of such an agreement as could alone secure the attainment of the right ends. This letter was decisive. It formed the basis of the terms ultimately settled, and which were embodied in a final agreement dated 28th January, 1852.

“The time limited for performance of the Agreement of 28th January has now elapsed. Your Committee rejoice to be able to announce today, that *both the footpaths* named at the beginning of this Report are at length completed, and *are now permanently open to the public*. The Common Rights of this Parish and of the Public in the two ancient footpaths, have been completely vindicated, by the Great Northern Railway Company having been compelled to provide, at their own expense, two substituted footpaths in lieu of those parts of the ancient footpaths which they had obstructed. And the greater part of the costs incurred by the Parish in procuring these results, have also been reimbursed by the Company.

“Your Committee feel it their duty to recommend, that finger-posts be, in conformity with the Highway Act, placed at the points where these footpaths open into Tottenham Lane; on which posts it shall be inscribed that they are *Public Footpaths*, and whereto they lead.* They further recom-

* See before, p. 353.

mend, that copies of the printed documents above referred to, be inserted on and annexed to the Minutes of this Vestry, so as to form a part of the permanent Records of this Parish. They further recommend, that the present Report be printed, and circulated through the Parish ; and that a printed copy of it also be inserted on and annexed to the Minutes of Vestry.

“Finally ;—Your Committee would remind the Vestry what the Great Principle is, which has been thus successfully vindicated ;—namely, the Duty and Power of every Parish to maintain the Common Rights of the Parishioners and the Public against all wrong-doers ;—a Principle which has been thus vindicated, in the present case, in spite of an opponent and of difficulties of no ordinary character. Your Committee are persuaded that the moral effect of the successful termination of their labours in the special instances named in this Report, will be great and lasting beyond the immediate occasion or limits of their efforts ;—that attempts at encroachment will hereafter be more cautiously made within this Parish, and that the vindication of the Common Rights of the Parish against any such encroachments will be found less difficult ; while other Parishes will learn a wholesome lesson from our example. But it is clearly desirable that it should be known that this principle, and its practical assertion, are well understood and recognized by the Parish. Your Committee would therefore, in conclusion, recommend that, in future, a *Committee on Footpaths* be regularly and annually appointed by the Vestry, to whom shall be entrusted the power and duty of entertaining, and taking prompt steps to remedy and to report to the Vestry, any questions and cases that may arise, of interference with, or obstruction to, the Common Rights of this Parish, in reference to a matter so important to the convenience, enjoyment, and health of all, as is, and always must be, the maintenance of PUBLIC FOOTPATHS.”

[Signed by the Committee.

Countersigned by the Vestry Clerk.]

SECTION XIII.

PERAMBULATION.

THE interests of every parish need that its bounds should be often gone round. The Common Rights of all, as well as the private interests of every individual, are equally concerned in this. The object and spirit of the important ceremony of Perambulation are, that the true limits shall be well known, and kept indisputably recorded, within which the Parish, as a Unit, is responsible for action, and able to raise a Common Stock by means of which that action shall be carried out. Unless these limits are maintained, a wrong is done to every man in the Parish: the validity of every rate made, for any purpose whatsoever, is liable to continual question: a colour is given for the interference, by others, in the management of affairs which rightly belong to the Parishioners only; but of which, by neglect, they show themselves incapable. The Parish is perambulated, in short, in order that the rights and duties of the Parishioners may be well and peaceably maintained, both internally among their own community, and with respect to neighbour Parishes, and to the State.

The fact of perambulation is significant of two things; which, though they may, at first sight, seem very distinct, have that connection which forms the very essence of national existence. These two things are, the assertion of the rights of the Parishioners themselves, and a respect for the rights of other Parishes.

The fact of perambulation, in itself, implies the existence and rights of others, as well as those of the perambulating Parish. True Liberty does not consist in the power to do everything at pleasure, careless of others. It consists in the power and right to do what each one wills, so long and so far as, in so doing, the equal power and right of others are not encroached on. It is, in short, the recognition of mutual rights and obligations, and the maintenance of those mutual

rights and obligations, in opposition to mere selfishness. Despotism and licentiousness are equally antagonistic to liberty. Each implies the supremacy of selfishness. The value of National existence and Free Institutions, lies in maintaining the fullest freedom of action to every individual, consistent with the like freedom to his neighbour; and the fullest independence to each local community, or Parish, consistent with the like independence of its neighbours. This consideration,—fundamental as it is to all questions of internal legislation,—is too often forgotten.

The ceremony of Perambulation is, then, the Symbol of Free Institutions, in the highest and truest sense; at the same time that it is one of the vital means to maintain the facts and realities essential to the action of those Institutions. The moment the bounds of the Parish cease to be regarded and cherished, and its unity respected, whether by Governments or its own inhabitants, that moment the bounds between Despotism and Independence, between Centralization and Free Institutions, between manly Self-respect and selfish Servility, are thrown down.

There is little doubt that every original settlement in England, such as now constitutes a Parish, was once surrounded by Waste or Common land; which separated it, on all sides, from adjoining settlements. Its own girdle of waste belonged to each, though not settled on with rights of private proprietorship. A common highway often ran between. Up to the middle of this highway, which forms the actual boundary, each Parish is the rightful owner.

The very extensive enclosure of Commons, of late years, has obliterated a vast proportion of this waste land. Still, very many parishes even yet show large traces of it. And it has probably been by detached settlements having been made in this waste, at one time and another, while the parent parish has not been sufficiently careful of its boundary, that those parts of parishes which are often found as outlyers, have got separated from the main part. The intermediate parts remained, properly, part of the Parish, though waste. But, through want of careful perambulation, neighbouring and more sharp-sighted Parishes have been let engross piece after piece of the waste,—both what thus became intermediate and what remained engirdling,—till several parts of the parish have become perhaps

isolated, and much may have become lost round the margin.* Those practically familiar with parish affairs, can often point to specific pieces and plots which they remember, or know by tradition, to have been formerly reckoned, without question, as within their Parish, but which a neighbour parish is now in possession of. Be it remembered, that every one who, either wilfully, or through timidity or negligence, allows such things to happen, is, in fact, criminally party to a fraud and a robbery upon every ratepayer.

The importance of the matters arising out of these points will be further evident, when it is considered that, not only does the amount of all *Rates* depend upon the number and amount of assessments included within the limits of the Parish, but that each Parish has to repair all the Roads which lie within its Bounds, and half of those between the Boundaries of its own and of adjoining Parishes; and that agreements have, as already stated, often been entered into, which tie each down to do a certain part of the latter;—while yet there has often been such negligence, that the frontage itself, which would, in these cases, contribute materially towards the rates out of which those and other roads are to be repaired, has been let slip away out of possession, and be unrightfully possessed by others. In some cases, a Parish has, through most culpable negligence, let the entire repair of a boundary road be foisted on to it by a more sharp-sighted neighbour Parish; so that, though the doing such repair is clearly contrary to law and right, it may become a matter of difficult and costly litigation to restore the matter to its proper footing.

No one can glance at the map of many Parishes, without feeling it to be certain that the outline there shown does not represent the true boundary. From mark to mark straight lines are mostly drawn by rule, making altogether a series of irregular angles. Such marks can, in reality, never give more than a vague hint at the true Boundary. The latter can only be known and maintained by the *tradition* kept up through constant perambulation, and by some knowledge of necessary circumstances, such as above suggested.

* See before, pp. 468, 469, as to including, within the Parish, waste land adjoining to it, under 17 Geo. II. c. 37,—an Act which is clearly nothing more than declaratory of the Common Law. It should never be forgotten, on Perambulations, to include all such pieces of land.

Perambulation used always to take place every year.* It is by no means a mark of the improved intelligence of our day, that the ceremony has, in many places, got to be less commonly performed. The more every place becomes appropriated and settled, the more, instead of the less, essential it is that the exact boundaries should be preserved, by that thorough and well-known personal tradition which frequent perambulation can alone secure. It is certain that five or seven years is far too seldom to maintain the tradition safely. The cost of one dispute and lawsuit on a point of boundary, will be more than the cost of many perambulations. The best interests of every Parish, the maintenance of its unquestioned assessments and common rights, and the due fulfilment of its just internal and external responsibilities, require, not only a careful consideration of all the above-named points as regards the determination of the Boundary, but that the Perambulation itself should be held, certainly not less often, in any parish, than once in three years. Without this, experience has proved that the tradition will be endangered; and so the rights and interests of the Parishioners will suffer, as they have in many places already suffered, great and irreparable injury. It would be much better that the Perambulation should be held, as always used to be everywhere the case, each year in every Parish.

In the same spirit of encroachment which has been seen in so many other things, ecclesiastical authorities have been anxious to make out that questions of Boundary are, or ought to be, within ecclesiastical jurisdiction. But the question of Parish Bounds is a purely secular question, determinable only in the secular courts. The authority cited for an alleged former ecclesiastical jurisdiction in the matter, proves, when examined, as has been found in other cases, precisely the reverse of what is pretended. That authority is an old Constitution of Boniface, Archbishop of Canterbury.† It has been already proved that

* See Brand's 'Popular Antiquities,' vol. i. pp. 167-178; Ayliffe's 'Parergon,' p. 407; Gibson's 'Codex,' p. 213.

† See Ayliffe's 'Parergon,' p. 408. This is one of the Constitutions on which Lord Coke remarks, that "Boniface made divers and many Canons and Constitutions Provincial directly against the laws of the Realm. The effect of them is, so, to usurp and encroach upon many matters which apparently [plainly] belonged to the Common Law; as, amongst other things, the trial of limits and bounds of parishes." He proceeds to state, that the attempt was resisted (as Englishmen did, in those times, resist ecclesiastical

no Constitution or Canon can bind the Laity, and that no matter that touches secular affairs can be dealt with in the ecclesiastical courts. But the terms of this Constitution itself, make it still clearer that, while it was an illegal assumption as far as it went, it never pretended to go thus far. It begins by reciting it as a fact, that *ecclesiastical persons* often are cited in the temporal courts, touching certain matters named. Hence two things are clear:—first; that the questions to which the Constitution relates, are solely those touching ecclesiastical persons, and not those where the secular concerns of parishes are concerned: second; that, even in the former cases, the matters were practically, at that very time, of civil and not of ecclesiastical cognizance. Moreover, the Constitution itself only pretends to prohibit “Archbishops, Bishops, and other prelates” from answering such matters in temporal courts. It does not attempt to touch any other point, or to assert or interfere with any other right.* The old Law of the Church has been already shown not to give true warrant for modern usurpations.

Neither the Statute in Edward the First’s time, called “*Circumspecte agatis*,” nor the “*Articuli Cleri*” of Edward the Second’s time, ventured to let any matters of this sort come within ecclesiastical cognizance.

It must be clearly understood that it is beyond a question, that any matter relating to the Bounds of Parishes is determinable only in the temporal courts.† Yet, driven from that point, some would, nevertheless, weakly pretend that the Boundaries of townships, or “vills” as they improperly call them in distinction, are triable in the ecclesiastical courts. This assumption is as plainly unsustainable as the other. The at-

encroachments); and that, the matter being brought before Parliament, “none of Boniface’s Canons against the laws of the Realm, and the crown and dignity of the King, and the Birthright of the subject, are here confirmed;” nor were “any of Boniface’s Canons” ever after confirmed. See that most interesting and important chapter, in Lord Coke’s 2 Inst., on “*Articuli Cleri*” (pp. 599–638).

* Lyndwood’s ‘Constitutions,’ lib. v. tit. 15, *De Pœnis*, pp. 314, 315, 316. We have here an instance of an ancient Constitution quoted to support a modern attempt at usurpation. However ancient, it would, as already shown, be a good and valid citation, did it not plainly transgress those limits which have been set, by the Common Law, to the validity of all Canons and Constitutions. See the *Note* on ‘The Law of the Church,’ before, p. 453.

† Coke, 13 Reports, 17; *ib.* 2 Inst. 599. *Duke of Rutland v. Bagshawe*, 19 Law Journal Rep. Q. B. 234; *Dolby v. Remington*, 9 Q. B. 196.

tempted distinction is palpably absurd and self-contradictory. The only authorities that can be quoted in its support, are, as before, one or two cases relating to ecclesiastical matters. Even these are contradictory, and inconsistent with each other; while none of them touches the Principle which is involved, and which Lord Coke long ago clearly laid down. It is quite plain, that no distinction can be taken between the mode of determination of the Bounds of a Parish and those of any of its parts. The growth of the individuality of those parts has been already fully explained. The Bounds of them depend as entirely on custom as do the Bounds of the Parish itself. And it is thoroughly settled, that no custom nor prescription can be tried elsewhere than in the temporal courts.*

There is little doubt that, originally, all Parishes were continuous with single Manors,—the latter merely implying the having certain rights and jurisdiction in respect of existing divisions. The law, however, for some time, allowed what was called *subinfeudation*, or carving up a large manor into smaller ones. Hence many Parishes now contain two or more manors. But this carving up was put a stop to by Statutes passed in the time of Edwards the First, Second, and Third.† What had been then already done, however, still remains.‡

On the other hand, it has been shown that every Parish has always had the inherent power of dividing itself, for the more convenient management of its own affairs, into parts; the existence of which divisions the Law has wisely recognized, whether they bear the name of tything, hamlet, township, vic, side, or otherwise. These, thus recognized, have usually had the same name given them in legal forms as the original parishes,—namely, “vill.”§ One original parish may now, therefore, contain,—and, in the northern counties especially, often does contain,—several of these townships, or derived “vills.” Hence,—the history and intricate relations of the subject not having been fully studied and understood,—there has arisen a confusion, sometimes found in writers, and sometimes even in judgments of the Courts, on the subject of the Parish and the Vill. The very difficulties, however, that have thus been felt, do but

* *Brown v. Palfry*, 3 Keble, 286; 2 Roll. Abr. 291, L; and last *note*.

† *Quia emptores*, 18 Edw. I. c. 1; 17 Edw. II. c. 6; 34 Edw. III. c. 15.

‡ Each such Manor having its own Court-Baron, to determine matters relating to the Manorial property and rights.

§ See before, pp. 16 and *note*; 37 and *note*; 120 and *note*.

serve the more strikingly to bring out the true character of the Parish, as a secular Institution.*

Each of these townships, etc., usually beats its own Bounds.

The parishioners are entitled to go into, through, and over any and every man's house or land, for the purpose of perambulation; and to remove anything that obstructs the passage;† but care ought to be particularly taken, in all such cases, that the exact boundary is gone over, though ladders or any other appliances be necessary for the purpose. It is to be regretted that more care is not taken, in the erection of buildings, walls, etc., to keep due regard to Parish bounds. Great inconvenience is often occasioned, both to the occupiers and to parishioners, by carelessness in this respect. It is not pleasant either to have to remove window sashes, or to pass through such openings; but both often become necessary.

There is another method of perambulation besides that by the Body of Parishioners:—namely, by a writ directed to the Sheriff of the county, requiring him, with the assent of both parties, to perambulate, and so settle, the bounds. This perambulation must be made by a jury of twelve men of the Shire, who will of course hear evidence on both sides.‡ This method may be sometimes very usefully applied, where there is any dispute between Parishes; and it will thus save the expense of costly lawsuits.§ It is even applicable to the case of the boundary line between Counties.

* See Chapter I., pp. 15, 16, 33, 34, 37; and p. 120, and *note*. I will only illustrate the matter here, by naming the case of Tottenham Parish (Middlesex); which, though named as one Parish and Manor in Domesday Book and the *Inquisitiones Nonarum*, was divided, at known dates, into several *Manors*; and was also long ago divided, for its more convenient Parish Self-Government, into four *Wards*, different from those *Manors*. Steeple-Ashton has already yielded practical examples of the working of such divisions. See pp. 509, 512, 514. See also, Fulham, p. 522.

† *Goddoy v. Michel*, Cro. Eliz. 441; *Taylor v. Deny*, 7 A. & E. 413.

‡ *Fitzherbert's Natura Brevium*, p. 133 (b), 134 (a).

§ The statutes 41 Geo. III. c. 109, s. 3; 7 Wm. IV. and 1 Vict. c. 69, ss. 2 and 3; 2 & 3 Vict. c. 62, s. 34; 3 & 4 Vict. c. 15, s. 28; and 8 & 9 Vict. c. 118, s. 39, contain powers for the Enclosure Commissioners and Tithe Commissioners to settle boundaries, in cases and manner therein mentioned. See also 6 & 7 Wm. IV. c. 115, ss. 27, 28; 3 & 4 Vict. c. 31, s. 2; 9 & 10 Vict. c. 73, s. 21; 12 & 13 Vict. c. 83, ss. 1, 9; 15 & 16 Vict. c. 79, ss. 23, 24; 17 & 18 Vict. c. 97, s. 11. Such powers can never even become invoked, except through the neglect of parishioners to fulfil their own duty of perambulation. Instead of lessening the necessity for the fulfilment of that

Marks are usually placed, at intervals, along the Boundary. These afford very useful memorials, though they can never be sufficient, alone, to maintain the Boundary. It is important, however, that they should be in sufficient number, of proper material, properly placed, and well maintained. There should be Marks at every turn and bend. And no very long interval should be let pass without one of them. In many places the only Marks are on trees. Though trees are, unquestionably, the most ancient manner of Boundary Marks, and formerly held sacred and inviolable, it cannot be lost sight of, that the sacredness formerly attached to such marked trees, has long since given way to a more vulgar estimate of their value.* A Mark-tree now finds little respect from the timber merchant's axe; though I apprehend whoever fells such a tree will be liable to indictment: he is doing all he can to unsettle the common rights and obligations of the Parish. It will, however, be wise that stone Marks (as the only durable ones) should be set up in all places where a marked tree now alone, in an essential place, records a Boundary.

Every Mark should have some inscription,—commonly the initial letters of the Parish. This, if not on both sides, should be turned towards the Parish itself. Otherwise confusion will often arise.

The expenses of perambulation will be borne out of such funds as the parish think fit to appropriate. The Overseers of the poor are very properly bound, by express statute, to share those expenses.† But the Surveyors of Highways are the off-duty, they do but render it the more important. Such pretended settlements are necessarily purely arbitrary, and not made with knowledge, or even by the aid of the means which the Sheriff's jury uses. They are unconstitutional in the highest degree; and can never be felt to be satisfactory.

* In very many places throughout England, there are ancient Trees, or the places where they once stood, known, each, by the name of "Gospel Oak." These are either the original, or the places of the original, *Mark-Trees*. Many of them must be of great age. They were called "Gospel Oaks" because, when the Parish bounds were gone round, the people halted at each mark, and a religious sanctity was given to it by the denunciation, there, of curses upon him who would remove the landmark. It is not unworthy of note, that, while *superstitious* ceremonies were so strongly censured at the time of the Reformation, the important and *vital* ceremony of Perambulation was expressly excepted. See the 18th and 19th of the *Injunctions* of Elizabeth, A.D. 1559.

† 7 & 8 Vict. c. 101, s. 60, makes the poor-rates absolutely chargeable with "all expenses properly incurred by the Parish Officers on the Peram-

cers within whose department the Perambulation particularly comes. A part, at least, of the expense should come out of their funds.

It is always desirable and proper that good feeling should be promoted as much as possible on the occasion of Perambulations, and that the ceremony should be made one to which all classes shall look, both back and forward, with satisfaction and pleasure. Sufficient temperate refreshment should be provided for those who go the round. And it is a wholesome custom, observed in most parishes, that a dinner, on a more liberal scale, —sometimes in part supplied, like the “Ales” of old, by the subscription of those who partake of it,—closes the ceremony. This unquestionably promotes the cheerful associations of the day, the pleasant memories of the past, and good-will for the future.*

In going the perambulation, there should be a sufficient number of parishioners present, of all ages. The object is, to keep alive a tradition, clear and well defined. There should always be several who have been before, others who have never been. There should be both men and boys. The elder, who know the bounds thoroughly, should, with the parish officers, go first; the younger men and the boys should follow. Care should be taken that all keep in the line of the Boundary; and, as often as possible, special attention should be fixed on objects that will impress themselves on memory. At every Boundary Mark they should halt; the boys should beat it with wands; while a flag, fixed on a long staff, should be planted on it, and a horn be sounded.† It is these little matters that fix such things on the memory. For the same reason, a lead-boy should be appointed, to go first among the boys.

It is a great mistake to pick out, as is sometimes done, poor bulation of the Parish, and in setting up and keeping in proper repair the Boundary stones of the Parish; provided that such perambulations do not arise more than once in every *three* years.” This restriction is improper. This Act does not, however, affect the payment of perambulation expenses from other sources.

* See before, p. 515 and *note*. Some interesting particulars as to the customs at Perambulation will be found in Brand’s ‘Popular Antiquities,’ vol. i. pp. 167–178. The essential parts of the ceremony are not, however, there touched on.

† Of course, this applies to parishes whose boundaries are not in the heart of close towns. It thus applies to by far the larger part of the Parishes in England. In towns, other modes of fixing attention will readily be found.

children, as a charity, on these occasions. Those should be taken, of all classes, who are most likely to live, afterwards, in the parish. No better or surer opportunity can be seized upon, than this of the Parish Perambulation, to impress, on the minds of all the young, that life is not selfish only, but that each has his part in a Common Welfare, and that every man owes duties to his neighbourhood.

SECTION XIV.

GENERAL ARRANGEMENTS NECESSARY FOR EFFICIENT ACTION.

WHATEVER has to be done, the most needful thing is, the ensuring that it be really done, and that it shall not be slurred over.

The first essential to this, in Parish action, is, the general sense that the Parish is a Unit, to which all its members bear actual and responsible relations. The relation may be that of Officer, Committeeman, or simple Parishioner; but the duty of none of these will be done rightly, unless this sense is always felt.

Copies of all the Acts of Parliament that in any way relate to Parish Management, Powers, or interests, should always be in the possession of the Vestry, and be laid upon the table at every Vestry Meeting. Copies of all such Acts as are now in force, should be kept bound up together;* and a copy of every fresh one should be obtained as it is enacted. Every separate Committee must of course have a separate copy of the Acts, if any,—such as Highway Act, Burial Acts, and otherwise—which relate to what it particularly deals with.

At the same time, nothing is more important than always to remember, what has been so often remarked before,—that these Acts are *suggestive* only. The Common Law will still be, in every case, that which is most important; and attention to this will, alone, ever enable real and sound Action to be carried on in any Parish, by any Parish Officer, or by any Committee.†

* Such as the Acts as to Vestry Meetings, 58 Geo. III. c. 69; 59 Geo. III. c. 85; 16 & 17 Vict. c. 65; as to compounding for Rates, 59 Geo. III. c. 12, and 13 & 14 Vict. c. 99; the Highway Act; the Lighting and Watching Act; the Museums and Libraries Act; the Baths and Washhouses Acts; the Burial Acts; the Nuisances' Removal Act, 1855; the Poor Law Acts; the County Constabulary Acts; the County Rate Act. The dates and titles of all of these, together with the others that bear upon the subject, will be found in their proper places in this work.

† See before, pp. 258, 351 *note*, and the references there; and Coke 2 Inst. 200, already quoted p. 477 *note*.

But no Parish, mindful of its own interests, will omit, during every session, carefully to watch the proceedings in Parliament. The task of doing this must be committed to some person. Often, one of the Churchwardens will do it: or it can be made the duty of the Vestry Clerk: or some intelligent Parishioner will gladly undertake it.* The proper course is, to receive and carefully look over, daily, the "Votes and Proceedings" of the House of Commons; which will be supplied, by Post, at a very moderate rate; and which one of the County Members will always be glad to give any information about.

The last point is one of essential practical importance. Empirical legislation has flourished in England of late years, because of the extraordinary, the incredible ignorance which prevails through the country as to what is done in Parliament. Newspapers merely report the speeches, made for show, on certain exciting topics; which are, however, generally the least important of all to the permanent well-being and inner life of the People. The actual *proceedings* of Parliament, the Bills introduced, and the Acts passed, are things as to which the people are, in most cases, entirely in the dark. It was not formerly thus. Formerly, the Representatives communicated every Bill proposed, to those whom they represented, before giving a vote upon it; that thus they might have information and suggestions; and that so the actual practical bearings of the Bill might be brought within the knowledge of Parliament: and every Act was made publicly and unequivocally known as soon as it was passed.† It is entirely otherwise now. Very few Members of Parliament have any knowledge of the Bills that are actually passing through the House at any time. Each gives attention only to one or two. Thus any amount of mischievous legislation can be accomplished; and much of such legislation is thus smuggled through Parliament every session.‡

* In the city of London there is a special Officer for this duty,—the *Remembrancer*. Every Borough should have such an Officer. But in country parishes, though the thing itself is no less important to be done, it can be quite well done in the way above suggested.

† See before, pp. 19, 29 and *note*.

‡ The same observations apply to the absurd amendments continually introduced in a hurry, and without either knowledge or consideration; which are let pass with indifference, to get rid of trouble; and any observations on which, however important the practical bearing may be, are treated, by the self-sufficient and ill-informed, as *verbal quibbles*.

The chief blame for this rests with the Parishes. If they took care, as it is their duty to do as the members of a free state, to watch and know every proceeding in Parliament, and immediately to communicate with their county representatives (where there is no borough) on any measure that can in any way affect Parish action, powers, or interests, the results of legislation would be very different to what they now are; and the present empirical system, by means of which every kind of jobbing is perpetrated, under cover of ill-considered and smuggled Acts of Parliament, would be put an end to. It can be put an end to by no other means. The highest intelligence, and the uttermost free choice, of the Representatives themselves, can never gift them with the means of doing what can only be done by the watchful attention and practical suggestions of those immediately concerned. The perpetual, ill-considered, and often purely selfish attempts at shifting and experimental legislation, that are now made in every session, render the carrying out of the recommendation above made a matter of the very highest practical importance.

The Churchwardens ought to summon a Vestry, without delay, whenever anything occurs that affects, or may affect, the welfare or property of the Parishioners.* They ought also always to summon it, at the requisition of any respectable inhabitants, on any matter that the latter state, in their belief, to require it. And they are bound to summon it for such an hour as will be most convenient to the greatest number of the Parishioners to attend.†

Care should be taken, in every Parish, that, before the choice of any fresh officers or committee is made, the full and plain statement of all the transactions and accounts of the late ones is before the Vestry.‡

* Take, as an example, the receiving notice, under the Burial Acts, 1852, 1853, 1855, of any intention to make a Representation to the Queen in Council touching the Burial-Ground. So, the introduction into Parliament of any Bill which will, either directly or indirectly, affect the powers of Parish Action in any way, or the local interests of the Parish.

† The true voice of the Parish is sometimes practically smothered, by calling Vestries when few can attend; as at 10 or 12 o'clock in the morning. Nothing can be more reprehensible. The right way is, to fix an hour by Bye-Law, adaptable to circumstances: and then, if the Churchwardens infringe this, they should be summarily dismissed, and fresh ones chosen. When there is no such Bye-Law, the hour named in any fair requisition should be adopted.

‡ The exactness formerly observed in matters of account, and Reports c

Every Committee, appointed for a special purpose, should be required to make to the Vestry, from time to time, written Reports of what it has done ; and, at the end of its task, to make a complete Report of the whole of its transactions. An example of this has been already given.* These Reports should all be entered on the Vestry Minute Book.

Every Committee, whether temporary or permanent, should be required to keep regular minutes of its own proceedings ; and, at the end of the task, if a temporary one, to lodge these minutes among the Parish Records. On such minutes, the names of the Members attending each meeting, should always be recorded.

The expenses attending the action, both of Officers and Committees, must be provided by the Parish. There is always some expense, though it may be often trifling, attending the work of every Officer and Committee. If men give their personal efforts, for the benefit of the whole, the least that can be done is, that all needful means shall be provided at the common charge.

It has been shown to have been formerly the custom, that the Parishioners were in the habit of coming together, at regular times, in social meeting ;—both in hospitable manner, and in public games.† Nothing can be more right or wholesome. Good neighbourhood and social charity, health of body as well as mind, discussion and mutual better knowledge of obligations and means, are thus promoted in the most effectual manner. But such good neighbourhood and social charity, such discussion and knowledge, are what Centralization most reads. It has always been the crafty trick of the enemies of free institutions and human progress, “*to forbid feastings and other meetings*,—which increase love, and give opportunity to

Officers, is illustrated, not only by the systematic inquiries and returns, which have been shown to have been formerly always made, but by the fact that payments used to be commonly made, and balances settled, in the open Vestry. Thus (Ardley) :—“*March 31, 1746. John Crane, Churchwarden, has in hand £7. 9s. 1½d., which he pays upon the Table.*” Same date :—“*Mr. Larkin, Overseer, pays upon the Table 16s. 9d.*” On the same date :—“*Due to Edward Parker [the other Overseer] £5. 13s. 4½d., which he receives from the table.*” And this is the common form.

* Before, Section 12, p. 538.

† If we do not now have target practice (though why not ?), what could be better than to have a *Parish Cricket-Ground* in every Parish ? See also, before, p. 249.

confer together of public matters,—under *pretence* of sparing cost for better uses.”* Under such false and hypocritical pretences, the promoters of the functionary system have contrived to fix a stigma on these old and good practices, in order to enable the modern system of organized jobbery to be carried out. The result is, that,—while deep-reaching evils of a social and moral kind have followed, and are increasingly following,—ten times the amount ever spent of yore over parish dinners, “ales,” games, or any other social purposes, are now squandered, sunk, far worse than uselessly wasted, in sustaining the functionary system itself; in what are sought to be disguised under the high-sounding name of “administration expenses,”—but the real title of which should be:—“Cost of meddling with free action and hindering self-reliance.”

Every Parish, and every Committee of every Parish, ought to be very careful to have the duties of all its officers well defined. This has been already illustrated in the case of the Vestry Clerk. It is equally necessary as to all other officers.† Thus only can disputes be avoided, and that mutual good understanding and kindly relation be maintained, which are essential to right Parish action.‡

To complete the assuredness that the duties will be fulfilled, which every Parish, as, in itself, a Unit, owes to every one of its members,—and which every one of its members owes to the Parish,—it would be highly useful if each Parish were called upon to give, as one of the Units making up the State, an account to the State at regular times, on certain points; whence the fulfilment or not of these duties may be known. Its own Officers and chosen Bodies give an account in detail to the

* Sir Walter Raleigh’s ‘Prince: or Maxims of State,’ p. 28; and before, p. 505, *note* ‡. These words, written 250 years ago, exactly represent what the English Centralizers of our time have systematically done.

† See Chap. III. Sect. 14; also, p. 527. There are few Parish Officers whose duties are now so much misapprehended as those of “Assistant Overseers.” Encroachments and unjustifiable assumptions by this officer are frequent, in consequence of his erroneously fancying himself independent of the Parish. (Compare p. 223.) It must not be forgotten that he can discharge no duty, without the express vote and sanction of the Vestry. See before, pp. 162–165.

‡ Complete suggestions and forms for Standing Orders and Bye-Laws, and for defining the Duties of the various paid officers, are given in my ‘Practical Proceedings,’ etc., already referred to (before, pp. 256 *note*, 258). It is unnecessary, therefore, to repeat these in the present volume.

Parish, that the Parish may know that all its parts have fulfilled their duties to itself as a Unit. The Parish ought to give an account to the State, that the State may know that all its own integral parts have fulfilled their duties to it as a larger Unit. The Law and the Constitution require this. It has been shown in this Book that formerly this was regularly and thoroughly done. Until it is done regularly and thoroughly again, the soundness of Parish Action cannot be felt to be assured.*

* See before, p. 46, and after Chap. IX.; see also, my 'Practical Proceedings,' etc., before quoted, pp. 94-97. A meagre return, in a very imperfect method, as to Highways is now made. It is of little value. See before, p. 247. .

CHAPTER VIII.

RATES AND TAXES.

THE power inherent in parishes to make rates upon themselves has been already fully shown and illustrated.* Though technical detail on the subject would not be consistent with the scope of this work, the general points that arise upon it may properly be embraced.

The most essential thing to a rate is, its equality; that is, its falling in equal proportions on all those within the Parish. It is unnecessary to enter here into the nice distinctions that have been drawn, arising out of the complicated character of modern pursuits and property, in order to get at a nearer approach to what is believed to be a true and real equality,—which may often differ from an apparent equality. For ordinary practical purposes, the comparative value of houses, land, or other premises—that is, *what they are worth to hire for rent, for their actually used purposes*, and deducting the outgoings necessary for sustaining them—serves well enough, when truly taken, as the basis of assessment. This is admitted to be the sound rule.

The very word “rate” means, proportion. The equal fairness of the tax made, constitutes it a *rate*. Unless this exists, the rate, be it for what it may, can be resisted as unequal, and therefore illegal.†

It is the duty of the officers of the Parish, to take care that

* Chap. II.; and see p. 436. “Parishioners,” says Viner, “have a sole right to raise taxes for their own relief, without the interposition of any superior court.” (Abridgment: *Parishioners*.) “None but Parliament can impose a tax. But the greater part of a parish can make a *Bye-Law* [to raise a tax].” (1 Modern Reports, p. 194.) “The major part of them that appear may bind the Parish” (*ib.* p. 236). “It must be done by the Parishioners themselves” (2 *ib.* p. 223). As to raising money at “Ales,” see pp. 497–503, etc.

† Which would formerly have made the rate bad altogether, in every case. The Act of 41 Geo. III. c. 23, modified this as to Poor-rates, on account of the very inconvenient consequences.

the assessment is thus equal. If the rate be proved to be fundamentally unequally assessed, it is therefore void; and a new rate must be made and assessed, by those who ought to have done this rightly at first.

The Parish officers should, from time to time, take the necessary steps to ensure the equal assessment of the whole parish, on some fixed basis. Else, they will bring the parish into great danger of litigation. So far as the *parish* rates themselves are concerned, it does not matter what the basis taken is;—whether, for instance, it be the rack-rental, or 25 per cent. off. Every one in the Parish will, in either case, pay an equal proportion, in order to raise the sum needed. The rate will be, nominally, higher where a low basis is taken, than where there is a high one; but the result, as to the sum paid by each, will be precisely the same. If, however, contributions have to be made by the Parish to the County-rate, or to any other having a wider area than the Parish, injustice will, no less clearly, be done to Parishes rated on a high basis of assessment. Thus:—the Parish of Bigham may be assessed, among its own inhabitants, with perfect equality, on the basis of 25 per cent. off the rack-rental. The Parish of Littleton may also be assessed, among its own inhabitants, with perfect equality, on the basis of only 5 per cent. off the rack-rental. As regards all parish rates, the inhabitants of each will be on a footing of perfect equality. To raise £10,000 upon either basis every man in each will pay equally, as among themselves; though, in the one with a low basis of assessment, the nominal rate may be a shilling, while in the other it will be only tenpence, in the pound. But, if a County-rate be levied, in the proportion of the amount, in gross, of the value of rateable property as appearing on the parish rate-books, it is clear that the Parish of Littleton will be very unfairly dealt by, and will pay far beyond her fair proportion. Her rateable amount is nominally, but not really, higher than that of Bigham. Either the County should levy a separate and distinct County-rate on a separate basis within each parish, or, if the county-rate is to be paid on these gross assessments, the assessments of all parishes should be on one basis.

As regards one rate, the Poor-rate, an Act was passed in 1836, as to making new surveys and valuations.* This is

* 6 & 7 Wm. IV. c. 96.

merely in affirmance of the Common Law, where it does not operate in limitation of that Common Law; which it does, however, by making certain external consents necessary. Its effect is thus far more hurtful than useful. The regular costly pedantries of the functionary system, are imposed under colour of it; so that it commonly prevents, instead of helping, a fair adjustment of the assessment. For the Highway-rate, or any other parish rate, an equal and correct assessment is, however, just as necessary as for the Poor-rate: and that equal and correct assessment, it is the bounden duty of the proper Parish officers to make. The expense should, in every case, be borne out of the funds to raise which the assessment is made.

The primary power of rating lies in the Vestry. In some cases, as in those of Highway Surveyors, the power to make the rate is delegated to the chosen officers of the Parish.* But it is usual to confer with the Vestry on the amount, and the accounts must be laid before the Vestry. The Church-Rate, and all others as to which no special power is given to some Committee, can only be made by the full Vestry itself.†

Attention has been already called to the fact that powers of compounding for certain rates have been embodied in some late Statutes. As these do not extend to all rates, it will be more convenient to notice them more particularly under the head of Poor-rate, to which they chiefly apply. It need be only remarked here, that such compounding may be useful in simplifying the collection of rates; and is, in fact, merely another mode of collectorship. But it is obviously a most unfair thing to allow the compounding for occupiers' rates, if the occupiers are to be thus deprived of their voice and vote in the matters that concern them. It thus becomes merely a contrivance for packing vestries. The occupiers pay an additional rent to cover the rates paid by the Landlord, and ought still, if real "inhabitants," to have all the rights that accompany the fulfilment of

* The case of the Guardians is one of those anomalies which grow up necessarily from the bureaucratic system. Entirely irresponsible to the Vestry or Parish, they have unchecked power of spending funds which they have no power to raise, but which they call on the Overseers to raise. The whole of the New Poor Law system is, however, so bad and unconstitutional, that this anomaly is but one example of what characterizes the whole.

† See before, p. 261. The Poor-Rate itself was always, and is still, bound to be *assessed* "by the agreement of the Parishioners within themselves." See 43 Eliz. c. 2, s. 12; and further, after, p. 576.

obligations. They remain "inhabitants;" and should thus remain voters, though the Vestry takes a special course as to some matters of obligation.*

The "allowance," as it is called, of some rates by Justices, is a mere ministerial act, and depends entirely on the terms of particular Statutes; which apply to a few Rates only. The Justices have no discretion, nor power to question or alter any rate presented for allowance. They can, indeed, be compelled by mandamus to sign the rate. It is a mere act of authentication;—a formality which makes the rate definitive.†

As a good deal of misconception exists, strangely enough, as to "allowance" and "publication" of rates, it will be well to state, here, their origin and application. "Allowance" and "publication" of Rates are both merely Statutory things, entirely unknown to the Common Law. They only apply, therefore, in the special cases to which Statutes have applied them. The making of a Rate is, on the other hand, within the Common Law powers of every Vestry; and the making of it by such Vestry is all that is requisite to its validity and completeness, and to the proceeding to levy the respective amounts assessed on individuals. A "Church-Rate" is neither 'allowed' nor 'published.' Nor is any other rate 'allowed' or 'published' *except* where a specific Statute has made one or the other, or both, of these forms requisite. 'Allowance' is required by the 43 Eliz. c. 2 as to the taxation for the Poor; and the same 'allowance' is made necessary in the case of the Highway-Rate, by the terms of the 27th section of the Highway Act, 5 & 6 Wm. IV. c. 50. Without those terms, it would not have been necessary in either of those cases. As to 'publication,' this was not necessary, in any case, for 150 years after the Act of 43 Eliz.; and it was only made so, as to Poor-Rates, because *those rates* had, notwithstanding the 'allowance,' (thus proving its entire uselessness,) got to be made "in a secret and clandestine manner," instead of by that open assent of the Vestry which the Act of 43 Eliz. c. 2, s. 12 requires. This reason is expressly assigned in the 17 Geo. II. c. 3, s. 1, which first prescribed the 'publication' of poor-rates. What the forms, for they are mere forms, of 'allowance' and 'publication' are, will be presently shown. It is obvious that, in all cases where the

* See before, Chap. VII. Sec. 11; particularly pp. 473-480.

† See before, p. 150.

facts are brought under direct notice, as by any rate made in open Vestry, after Notice of Vestry for the purpose, or by assessment as under the Nuisances' Removal Act, 1855, where separate notices are personally served, these forms would be entirely out of place. In no such case do they apply.*

If the rate is not equal, or is, on any other ground, illegal, it is open to any one to appeal. There are two modes of appeal. The one general, the other special. The special appeal is such as is given by Statute, in cases of particular rates. This will be treated of under each head. The general appeal is the simplest and most proper method, and has the great recommendation of being perfectly inexpensive. This appeal is to the Vestry of the Parish, which is, in fact, the original assessor. Where the Parish is very populous, the appeal clearly cannot, without great inconvenience, be made in open Vestry. A Committee should, in that case, be annually appointed, empowered to hear and determine in all cases of appeal, and in all cases of doubtful assessments, and to take care that all future assessments are corrected, in accordance with the result of such appeal and doubt.† When the Vestry is not numerous, this may well be done in open Vestry. At such an appeal, there will always be some persons present cognizant of the facts. An impartial hearing will be got, on the fair merits; and the assent of those concerned will decide. If there be a Committee, it should keep a record of its proceedings, and report them periodically to the Vestry. The action of such Assessment Committees has been found, in practice, most beneficial and satisfactory, and a great saving of expense. It is gladly availed of even by wealthy Public Companies, instead of the risk and cost of litigation. By its means, the Parish assessments may be kept as nearly up to the mark of perfect exactness and equity in every case as is humanly possible. It is obvious that such a Committee must be composed of men of intelligence and independence.

Churches and Chapels, and Institutions for the advancement of Science, Literature, and the fine Arts, are exempted, by special Statutes,‡ on grounds of public policy, from bearing Local Taxation.

* In the case of the *Queen v. Middlesex* (after, p. 570), it was attempted to set up the necessity for 'allowance' and 'publication.' Of course so futile and unsustainable an objection was not listened to by the Court of Queen's Bench.

† See before, p. 230. ‡ 3 & 4 Wm. IV. c. 30, and 6 & 7 Vict. c. 36.

Parish Rates may be almost infinite in variety. The Poor-Rate and the Highway-Rate are two that are particularly named in certain Statutes. But it has already been shown that the Parish may, by its own Bye-Law, make and levy a rate for any purpose which is for the Common Good. Besides this, it has also been shown that Parishes are liable, under many circumstances of remissness, to be amerced.* Such amercement must be raised by a rate. In this, as in all other cases, "the neighbours, by assent," must "assess a certain sum upon every inhabitant."† In this respect, indeed, such amercements stand on the same footing with what ought to be the practice as to the Poor-rate and every other rate; namely, that, however obligatory the raising of any sum may be, the case is thus far the same as with a rate made solely by a Bye-Law of the Inhabitants, that it ought always to be divided and assessed "by the agreement of the Parishioners within themselves."‡

The attempt has lately been made to curtail the power of Parishes to make rates for such purposes as they think for the common good. This has been done under cover of liberality, as is so often the case; and there is no doubt that many honest men have supported it, in the sincere belief that it is a liberal proposition. Thus little are the simplest constitutional principles understood in our day. The proposition is, under the name of "repeal of church-rates," to prevent and tie up Parish Vestries from having, for the future, the power, which they have always heretofore enjoyed, of *considering and determining*, for themselves, whether or not they will spend their own money! The proposition is, in reality, one that strikes at the root of Parish action. It is plainly a proposition entirely inconsistent with the professions under which it is put forth; and is an attempt, by force, to coerce men's free action in their own concerns.

* The Parish is, in the same way, bound to reimburse, when a Churchwarden or other officer has any obligations cast on him, the expenses of fulfilling which are not specially provided for. (See after, p. 610.)

† 'Doctor and Student,' Dialogue ii. chap. 9.

‡ See Magna Charta (" *Liber homo non amercietur*," etc.); Stat. Westminster I. (3 Edw. I.) c. 18; 35 Eliz. c. 4, s. 1; 43 Eliz. c. 2, s. 12; 43 Eliz. c. 3, s. 2; 13 & 14 Car. II. c. 12, s. 18; etc.; Griesley's Case, 8 Coke Rep. 38-42; Godfrey's Case, 11 Coke Rep. 42-46; and 'Doctor and Student,' as above. See an illustration before, p. 514. Sewers-Rates depend on exactly the same Principle. See also, Sec. 7 of this Chapter.

It is a curious illustration of the superficial way in which practical questions are dealt with, in our time, that it is often said that, before certain Statutes were passed, there was no efficient mode of recovering Parish Rates.* The fact, on the contrary, is, that the very instance which forms the *Leading Case* on the subject of Parish Rates, arose upon, and states the facts as to, the application of the simplest means of recovering rates that can be devised,—the means sanctioned by Common Law long before any Statute; and which are much simpler and less expensive, and safer because involving more responsibility, than any means devised by Statute. This remedy is by distress, *under order of Vestry openly made*.† It is, practically, the same as that which different Statutes have merely re-declared, but accompanied with many formalities and the general lessening of the sense of responsibility, in reference to some particular rates. But it is a Common-Law remedy, to sanction which no statute is needed. It is applicable to the case of any rate which the Parish may choose to make, for any purpose of Common Good.‡

The incidents to every Parish Rate are, then, three: the making, assessing, and levying. The *making* the rate, involves the consideration of whether or not such a rate ought to be made at all; and, if determined on, what is the right amount needed. The *assessing*, involves the fixing every man's "scot," by the equal division, "*pro rata*," among all, of the burthen of the rate thus made.§ The *levying*, is the gathering in of the sums thus assessed.

No rate or tax has the characters that every just tax ought

* Into this extraordinary error so usually careful and judicious a writer as Mr. Rogers falls. See his 'Ecclesiastical Law,' p. 226. The Poor Law Commissioners, in whom, as they set up for infallible, it is far less excusable, show, more strikingly, the same ignorance, in their 'Report on Local Taxation' of 1843; a document put forth with the object of getting up a case for the monstrous proposition, of bringing all Local Taxation under the blighting influence of their bureaucratic control.

† See before, p. 178, and *note*. See also the case itself stated on p. 584.

‡ In the case of outgoing and incoming tenants, the proportion of rate must be equally adjusted. See 17 Geo. II. c. 38, s. 12.

§ The word "assessment" is sometimes used in the sense of stated rental. This is incorrect. The *rental* stated (on whatever basis it be dealt with, as before touched on) is merely the *material* upon which the actual assessment of the rate is founded. The *assessment* is the sum fixed as that on which each has to pay his *ratul*.

to have, unless all these steps are followed.* Without them, there is the door opened to every fraud, and there is the necessary presence of ignorance and delusion. It is thus with all those rates which are directed, by several modern Statutes, to be paid out of the Poor-Rate; a point which will be further alluded to in treating of that rate.

Every rate thus needs all care and consideration, not only before it is made, but in the way in which it is assessed. And so much, and properly, is it presumed that these will always be given to this responsible task, that a rate once made cannot be abandoned;† nor can more than one rate be made for the same thing, and to run during the same time.‡ This strictness is obviously necessary to the sense of *certainty* in local taxation.

As a general rule, no rate can be retrospective: that is, no Officer is justified in first spending money, or contracting an obligation, and then asking its reimbursement. This rule is obviously essential to the maintenance of actual responsibility.§

It must be well understood that the rates which will now be separately named, do not include all that are made by Parishes. The more usual ones only are taken.|| In the illustrations already given, other rates have been mentioned, in addition to those that will be here specified; and it has been shown that the matter of what rates shall be made, is one entirely in the hands of the Parish.

* Not necessarily, all taken by the primary parties. The *making* of a rate, may, in some matters, as County-rate, Amerciament, or National taxes, be properly settled by Representatives, or by a judicial act; and the assessment in gross, on Parishes, may be made by the same authority, on a sound datum and fixed basis. But the individual assessments in each parish, and the collection, should always be local. It used to be thus, even in cases of imperial taxation: and it is essential to a true consciousness of the part each man has in the obligations and responsibilities of Society, that it should still be so. It would involve no inconvenience or expense whatever. The contrary system is a mere bureaucratic contrivance; but it is an exceedingly mischievous and demoralizing one.

† R. v. Cambridge, 2 A. & E. 370; R. v. Fouch, 2 Q. B. 308.

‡ R. v. Fordham, 11 A. & E. 73.

§ Tawney's case, 2 Lord Raymond, 1009; R. v. Haworth (Bradford), 12 East, 556; and see before, pp. 102, 159, and after, p. 595.

|| The Statute 10 Anne, c. 11, s. 24, expressly speaks of Poor's Rates, Highway-Rates, Church-Rates, "*and other Parish Rates.*"

SECTION I.

HIGHWAY RATE,

AND ASSESSMENTS UNDER THE NUISANCES' REMOVAL ACT, 1855.

THE Highway Rate is a rate upon property. It is, in one form or another, the oldest charge on the land, and concerns the oldest Parish obligations, in England.* It has, in later times, been thrown, to a large extent, off the land on to houses. The convenience of intercommunication is certainly as important to houses as it is to land. The growth of towns and the desirableness of dwellings clearly depend, usually, on the facilities of intercommunication.†

This is the rate whose antiquity and custom are so well known, that when first, on the failure of parsons to fulfil their obligations, it was sought to sustain a Church-Rate made by the Parish, this was done by showing the analogy of such a Rate to a Highway-Rate.

This rate is now made, assessed, and levied, by the Highway Surveyors, the openly elected officers of the Parish, whether individuals or a Board. They are bound to assess all property, without favour or exception. The assessment on the rate thus made, must be signed by the Surveyors. If there is a Board, three members, at the least, must sign it. Two justices are then bound (they have no discretion in the matter) to add their signatures, as the definitive authentication of *that* as the true rate.‡ This is what is called the 'allowance.' The rate is then

* See before, pp. 104, 469, on the *trinoda necessitas*.

† The Highway Rate is, in part, a commutation for personal service; to which, the same as to military service, all were originally bound. This has been illustrated in quotations from Steeple Ashton records. The personal service nominally continued, as to Highways, under the name of Statute Duty, until the present Highway Act was passed, in 1835. It was regularly compounded for however, on what were called "Composition days" (see before, p. 207). The whole is now commuted to a Rate. A money rate was always, however, made when any new road was to be made, or other special work needed doing.

‡ Before, pp. 150 and 561.

published, by a notice of it being fixed on the doors of all churches and chapels, and other usual places in the parish. This must be done forthwith. If the rate be not thus published by the next Sunday after it has been allowed, it will be a nullity. As the Rate is not made in open Vestry, after Notice of the intention to ask it, this Publication is necessary as a substitute, though a very imperfect one, for that full knowledge of the rate which such Notice and open Vestry would otherwise give.

As soon as the rate has been made and published, as many small Notice-papers should be printed as there are ratepayers in the Parish. These should state, in print, the amount in the pound, and the date, of the rate.* Each one should then be filled up with the name of one ratepayer, and the amount of his assessment; and the amount of rate due from him in respect of that assessment: and a day,—left blank in the print, and filled up, to suit convenience, in ink,—should be named, on which payment will be called for. One of these should then be left at every House in the Parish. It is usual to give about a week's notice.

In order to help them in assessing the rate, the Surveyors have the right to inspect the Poor-Rate Books, and to make any copies therefrom, either of the whole or of any part. But they are not at all bound by the particulars in the Poor-Rate Books. On the contrary, there may be compoundings of Poor-Rates which cannot be made of Highway-Rates. What they are bound to do is, to make a fair, equal, and true assessment upon all. The Vestry is bound to see that this is done.

Any person thinking himself aggrieved by any Highway-Rate, may, besides the general appeal to the Vestry, or the Assessment Committee, as already named, appeal to the justices, at quarter sessions. For this purpose, he must give notice to the Surveyors, *within fourteen days after the rate is made*, of his intention to appeal, with the grounds of his appeal; and must find sureties to try the appeal.†

If there have been any errors in the rate as assessed, the Surveyor can correct them, with the assent of the justices at a

* That is, the date of the *making*,—not of the *allowance*. The “allowance” gives no force or validity to the rate; it is merely a matter of form.

† 5 & 6 Wm. IV. c. 50, s. 105; the provisions of 41 Geo. III. c. 23, as to Poor-Rates, are, by s. 106, made applicable in all appeals against Highway-Rates. See before, p. 562, as to the general appeal.

special sessions for the Highways ; that is, subject to the necessity of producing proof that such alterations ought to be made.

Wherever Overseers of the Poor have powers, under any *local* act, to compound for rates with landlords, the Surveyors have like powers.* This clearly does *not* extend, therefore, to the powers of compounding given by any general Act, such as will be presently noticed to exist in reference to the Poor-Rate. All such compounding is illegal in the case of Highway-Rates, except in the case of houses of a rateable value of less than £6; and then only with the assent of the Vestry.†

No Highway-Rate can be made of more than tenpence in the pound at one time ; nor can rates be made to a greater amount, in the whole, than two shillings and sixpence in the pound in one year, unless by consent of four-fifths of the inhabitants, assembled in a Vestry specially summoned for that purpose, after ten days' notice given by the Surveyors themselves.‡

Special additional rates may, however, be made, by the Highway Surveyor, to meet charges for compensation for land taken to widen the Highways, or to make fresh ones.§ The same power applies in case of legal expenses properly incurred by the Surveyor, which he has not otherwise funds to discharge.||

There cannot be two rates made and running at the same time ; though one may, and in practice generally must, be made before the preceding one is entirely got in and wound up.¶

Where Parishes join together into a District for the management of the Highways, each one still appoints a person to make and levy its own separate rate. It is his duty to pay over such rate to the District Surveyor. He is, indeed, much the same as the *old* "Assistant Surveyor."***

The Surveyor has the same powers and remedies for levying, and if necessary enforcing payment of, the Highway-Rates, as exist in case of the Poor-Rates ; that is to say, by warrant, distress, and sale.†† A demand, after the Notice above named, must always be made, before a warrant can be applied for. The warrant is usually granted after a summons ; in answer to which

* 5 & 6 Wm. IV. c. 50, s. 30.

† Before, p. 480 ; after, p. 578.

‡ 5 & 6 Wm. IV. c. 50, s. 29.

§ *Ib.* s. 82.

|| *Ib.* s. 111.

¶ *R. v. Fordham*, 11 A. & E. 73.

** See before, pp. 110, 245, 246.

†† As to Collectors of Highway-Rate, see before, p. 179. As to division of rate between outgoing and incoming tenant, see before, p. 564, *note* ‡.

the defaulter may show any cause he can,—such as tender, etc. Of course he cannot then object to the rate itself, or to his assessment ; unless the rate be an absolute nullity, either as an entire rate, or in the assessment on himself. He may, however, be excused on the ground of poverty, on due application for that purpose.*

The nature of the assessments made for works done under the Nuisances' Removal Act, 1855, has been touched on before, and I have elsewhere treated it at length. It is unnecessary to do more here than refer to the note of the case, given below, in which the practical suggestions made by myself for carrying the Act into effect were confirmed, by the Court of Queen's Bench, as right, valid, and "unexceptionable."†

* 5 & 6 Wm. IV. c. 50, s. 32. For this purpose, the person must apply to the Justices at Petty Sessions, the Surveyor being summoned on the part of the parish. The Surveyors themselves cannot excuse any one's rate. They are, very properly, *bound* to assess every one. Nor can the Justices excuse any one's rate at their pleasure. They are bound to summon the Surveyor to be present at the time ; and they can make no order unless *proof of inability* to pay the rate is given by the applicant.

† See before, pp. 341, 344, 346, 403. The great importance of the practical matters involved, makes it desirable to give, here, the main points of the case of *R. v. Middlesex* ; which are as follows :—

Assessments under Nuisances' Removal Act, 1855.

The whole of the proceedings taken in the case, and of the forms adopted, were those suggested in my 'Practical Proceedings under the Nuisances' Removal Act, 1855.' (See pp. 50–54, 88–92, 105–116, and 163, 164, of that work, 2nd edition.) The Assessment made was for an "*annual payment*," with a Resolution giving power of redemption.

The Court having granted a rule to show cause why the Justices should not issue their warrant to enforce payment, —

On Wednesday, the 7th May, 1856, cause was shown against the rule. Counsel contended that the Resolution adopted in reference to *redemption* of the annual payment was part and parcel of the assessment itself, and made that assessment inconsistent and void ; for the operation of the Resolution would be, he said, that some would become free from all future payments at once, while others would be saddled with the annual charge to the end of time. He contended that the Resolution formed part of the Notice of assessment (the form of which was the same as in my "*Practical Proceedings*," p. 134, 2nd edition) ; and that this resolution, having been passed the same day as the assessment itself, must be taken to be part and parcel of that assessment.

Mr. Justice Wightman.—That cannot be. It is no part of the assessment. It might have been made another day. Being made the same day make no difference. It is clearly distinct from the assessment.

Mr. Justice Erle.—The Resolution is not part of the assessment ; though, if it were, I do not see how this could be ground of objection to the assessment.

Lord Chief Justice Campbell.—The assessment might have been made on the 1st and the resolution on the 20th. They are obviously distinct.

Counsel contended the point at much length : but,—

Lord Campbell said the Court were unanimously of opinion that the Assessment and the Resolution must be taken to be distinct.

It was further contended that, as the Act empowers the Local Authority to “assess every house, building, or premises, then, or *at any time thereafter*, using” the Sewer, it was necessary that the assessment should be made, not only on houses now standing there,—thus fixing a perpetual and unvarying charge upon the present premises, irrespective of the future increase of the neighbourhood ; but that it ought to include houses to be hereafter built : and, as the assessment did not do this, he contended that it was bad, in itself.

Mr. Justice Wightman.—How can they provide for cases which have not yet occurred, and may never occur ? These cases may be provided for, if and when they do occur.

Mr. Justice Erle.—The case you put may be provided for when it arises. —It is right that the present inhabitants, who have the actual advantage, should now pay for that advantage. They are bound to pay for repairs rendered necessary by the state of the drains which they use.

Lord Campbell.—How can the Board provide for the future user ? You expect them to do that which is impossible. The assessment cannot be bad because the Local Authority have not done that which it is not possible that they can do.

The proceedings as to Assessment, (taken from the Minute-Book of the Local Authority,—which was a Highway Board,) and the Order of Assessment itself, were then read from the affidavits, as follows :—

“That the said resolution and order of assessment are contained in the Minutes of Proceedings of the said Board in the words following :—

“As to the Maynard-street Assessment,

“The Clerk laid the Special Assessment-Book on the table, and the said Special Assessment-Book having been examined, and the assessments therein set down having been found to be correct to the best of the knowledge and belief of this Board, it was

“Resolved : That an order of assessment be now made and signed on behalf of this Board, as the Local Authority under the Nuisances’ Removal Act, 1855, upon the premises and for the houses described, set down, and contained in the ‘Maynard-street Drainage Assessment’ in the said Special Assessment-Book. And the said Order of Assessment was thereupon then made and signed accordingly.’

“That the entry in the said Special Assessment-Book is in the words following.”

[Here follows the Order of Assessment itself, in the identical words of the Form (5), p. 133, of my ‘*Practical Proceedings*.’]

Lord Campbell.—That is quite unexceptionable.

It was further contended that the assessment should have been “allowed” and “published” as Highway-Rates are.

Lord Campbell.—It cannot be pretended that this assessment has been “made in a secret manner.”*

* See 17 Geo. II. c. 3, § 1 ; and before, p. 561.

The learned counsel said that the necessity for "allowance" and "publication" followed from the words of the section:—"levy and collect the sum and sums so assessed, in the same manner, and with the same remedies in case of default of payment thereof, as highway-rates are, by the law in force for the time being, leviable and collectable."

Lord Campbell.—Yes; but that relates to "*levying and collecting*" the assessment, not to "*making*" it.

It was then contended, finally, That the meaning of the terms "immediate, or annual, or distributed over a term of years," was contradictory and unintelligible; that, as the time for appeal was past, if "annual" meant annual for ever, the person against whom the warrant had now been applied for by the Local Authority would be saddled with the payment of 9s. a year to the end of time.

Mr. Justice Wightman.—"Annual" means a permanent yearly charge. The assessment here is 6d. in the pound; but if the ratepayers choose to compound for four years, they can do so.

Mr. Justice Erle.—They can pay the first year—and then compound the second; or pay for two years and then compound; or for three years and then compound. I think that by putting a rate of 6d. in the pound in the first instance, the Local Authority has acted with great consideration for the ratepayers, and that they really have nothing to complain of.

The Court then, without calling upon Counsel in support of the Rule, gave judgment.

Lord Campbell.—I am of opinion that this rule must be made absolute. The Local Authority are required by the Nuisances' Removal Act to do certain works, and are empowered to assess the premises using them. They may make the assessment either for a payment to be made immediately, or for a permanent annual payment, or for a sum the payment of which is distributed over a term of years. The sum is not, in either case, to exceed 1s. in the pound. This Board have fulfilled the duty which the Law imposed on them in respect to making a sewer. They have then made an assessment on the premises using that sewer, for "an annual payment;" which is quite regular. They afterwards pass a resolution, allowing those who will pay a certain number of years' payments at once, to be discharged from future annual payments. This resolution cannot be held to be part of the rate; though, if it were so, I do not see how it could be any objection. Such a resolution is certainly not a hardship, as has been contended, on any parties. It is for the ease and benefit of those who have to pay the assessment. As to the unequal advantage which it is said those will have who compound under this resolution, over those who do not, the resolution is so framed that it is in the power of any one who is assessed, to take advantage of it; and it is the fault of any person himself who does not do so. As to the point that the rate should extend to houses which shall *hereafter* use the sewer, it is impossible for any rate to do so. The Local Authority cannot be required to assess premises which do not exist; and we cannot give such a construction to the statute. From time to time the Board can make fresh assessments as the cases arise. The terms of the present assessment are within the powers given to the Local Authority by the statute.

Mr. Justice Wightman.—I am of the same opinion. The assessment is quite regular. The Local Authority are empowered to assess the premises either to an immediate payment, or to a permanent annual payment, or to a sum

which is to be paid within a certain term of years,—according as they find it “just and reasonable.” They have in this case found it “just and reasonable” to assess the premises to an annual payment. But, by a subsequent resolution, they have enabled those using the sewer to discharge themselves from all future payments under this assessment by a composition for four years, to be paid at once. They give the ratepayers the option; and this is for the convenience of the ratepayers. It can be no hardship upon any one; but, on the contrary, gives an option, of which any one can avail himself.—This assessment is perfectly good.

Mr. Justice Erle.—I am also of opinion that the rule must be made absolute. The Assessment appears to have been made with great care; and with great consideration for the convenience of those using the sewer. I find that the title of this Act shows its purpose to be for the Removal of Nuisances and Prevention of Diseases. The Local Authority have the obligation cast on them by this section, of removing nuisances which are injurious to health, by making sewers in cases like the present. This Board have done so; and what they have done is for the benefit of those who now have houses and premises there. It is reasonable, therefore, that the charge that is now incurred should be paid by these. As to the objection that, if those who have to pay the assessment do not avail themselves of the resolution which has been referred to, they will be prejudiced, because the annual payment will be a perpetual and unvarying charge fixed on them for ever, it must be supposed that these sewers will require repairs and amendments from time to time; and then the Local Authority have power, under this section, to make new assessments,—such as shall be then necessary; and these may be made to supersede entirely the present assessments, and will include all houses then using the works. In the meantime, the work that is now necessary has been done, and the assessments must be paid by those who now use it. As regards the resolution itself, instead of being a hardship upon any one, it seems to be equally for the convenience of all those who are assessed. The resolution does not say that the amount of four years' annual payments must be paid at once; or else those not so paying will be saddled with a perpetual charge. What it says is, that whoever pays the amount of four years' annual payments at once, will not be called upon for any annual payments, on account of this assessment of his premises, in future. But, at the same time, if it is not now convenient to any one to pay the amount of four years' payments at once, it leaves it open to him to discharge himself of future annual payments under this assessment, at the end of a year; or, if not then convenient, he can do the same at the end of two or of three years, or even at any future time, upon paying up all arrears then due, together with the sum named for composition in the resolution. This seems to have been contrived with every care, in order to meet the terms of the Act, and to prevent the charge from becoming necessarily a perpetual charge, even in the case where an assessment of a shilling in the pound, either by way of immediate payment, or distributed over a term of years, will not be sufficient to cover the outlay which the fulfilment of the Act has required; and where, therefore, the assessment to an “annual payment” has become necessary.

Rule made absolute.

SECTION II.

LIGHTING, OR LIGHTING AND WATCHING, RATE.

UNDER the Lighting and Watching Act, the ratepayers adopting the Act determine what shall be the largest sum that the elected Inspectors shall have power to call for in each year. The Inspectors, when funds are needed, sign an order upon the Overseers, requiring the latter to levy such a named amount as they need at the time. The Overseers levy this,—but as a distinct rate. It is, however, to be assessed upon the basis last taken in assessing the Poor-Rate; and is to be collected in the same manner, and with the same powers and remedies, as the latter rate. There is, however, one important difference: namely, that land is only to be assessed at one-third the rate in the pound at which houses, buildings, and other property, are assessed. The peculiar purpose of this rate must be presumed to justify this difference. The Overseers must pay the amount ordered, to the Treasurer appointed by the Inspectors, within three months after the order has been received, or they become themselves liable to distress.*

* See before, Chap. III. Sec. 4; and 3 & 4 Wm. IV. c. 90, ss. 32-38; also see *ib.* s. 67, as to appeal.

SECTION III.

COUNTY-RATE AND POLICE-RATE.

THE Police-Rate, under the County Constabulary Acts, is to be collected with and as part of the County-Rate.* Whether or not there is a Police-Rate, therefore, makes no practical difference in the forms and proceedings. There is a County-Rate everywhere in England. The County-Rate is regulated by a late Act,—15 & 16 Vict. c. 81. Under this Act, the Overseers are bound to produce returns, estimates, copies of assessments, etc. made to and received from the County authorities, to the Vestry of every parish; which must be specially summoned by them for the purpose of receiving and considering these. The rate is then, after opportunity for objection, either by the Overseers on behalf of the Parish, or by any inhabitant, levied by precept on the Guardians, a printed statement having been first sent to the Overseers of every parish.†

The attention of Parish officers and of Parishioners should be particularly called to the County-Rate Act. There is reason to fear that it is not generally understood by either Parishioners or Parish officers.

It seems clear that the Act contemplates a separate rate, to be assessed and collected within each parish, as and for the County-Rate, apart from the Poor-Rate.‡ But this is not,

* The Metropolitan Police-Rate does not go through the same machinery, but is paid directly out of the Poor-Rate.

† See before, pp. 155, 160. The appeal may be made at any time. It is not confined to the immediate laying down of a new basis. And this is clearly right. The Basis of assessment may be sound and equal this year, and become quite otherwise next year. It is the business of the Parish Officers to look to this; and, if needed, to call the attention of the County authorities to it, by appeal under section 22 of the above Act.

‡ It must be admitted, however, that the *Schedule* to the Act is contradictory, and bears out the bad practice. The Act says that they “*shall raise*” the county-rate “*in like manner*” as the poor-rate, and shall pay such moneys, etc. There can be no mistake in this. A thing is not “*like*” another if it is merged in it. Likeness implies separateness:—the Lighting-Rate (see last Section) is a parallel example. The schedule, however, says

practically, done. It would be very much better for the public interests if the County-Rate were thus kept distinct. As it is, there is no question that the integrity, economy, and judiciousness of County management, suffer by the system of disguise and concealment under which the whole is now wrapped, and from the ignorance, carelessness, and misapprehension that necessarily hence follow.

they are to pay "from and out of the moneys" in hand for the use of the Union ! Such is modern Law-making.

SECTION IV.

POOR-RATE.

THE Poor-Rate is a modern tax upon the occupiers and enjoyers of property; caused, only, by the misappropriation by others, to their own use, of that which was bestowed for the use of the poor.* The Statute of Elizabeth intended that all property within the Parish, the use or fruit of which was enjoyed, should be taxed. Stock in trade, for instance, ought to be thus rated—this being a simple and obvious test of the *ability* of each to contribute. By a reversal, however, of what has happened in the case of Highway-Rates, the land has, by late Acts, got more than its original share of this burthen fixed on it. Since 1840,—that is, nearly two centuries and a half after the act of Elizabeth was passed,—it has been discovered that stock in trade and other personal property are inconvenient things to tax. And so Annual Acts have been got to be passed, beginning with 3 & 4 Vict. c. 80, to exempt all such property.

It is commonly said, that the Overseers can, alone, make the Poor-Rate. Perhaps this is not quite so certain. It has been shown that the choice of the Overseers is in the Vestry.† Statutes, as well as principle and custom, recognize the making of the Rate, also, as the act of the whole Vestry. Thus the Statute 7 Anne, c. 17, speaks, explicitly, of “the Churchwardens, Overseers, and *Inhabitants in Vestry duly summoned*” making a rate, “*in like manner as by law they may do for the maintenance and relief of the Poor.*”‡ It has already been shown that the Poor Law Act of Elizabeth explicitly says, that the assessment is to be made “by the Agreement of the Parishioners within themselves.”§ This necessarily implies full information as to the accounts, and consideration of and dis-

* See pp. 28-31, 144, 145, 451, 597-604.

† Before, pp. 149-151.

‡ And see 10 Anne, c. 11. s. 24.

§ Before, pp. 560 note †, 563.

cussion on the sum which it is actually necessary should be raised.*

The Overseers are bound to see that *some rate is made*. But the amount of this is, according to all the spirit of our Institutions, to ancient practice, and to propriety, to be discussed and settled in and by the Vestry. The Overseers, in point of fact, usually do, and always ought to, lay their estimate before the Vestry. Upon this, the rate is made. After the rate has been assessed, it must be "allowed," like the Highway-Rate, by the signatures of two justices. It must, then, forthwith be published. If this is not done by the Sunday following, the rate becomes, as in case of the Highway-Rate, a mere nullity.

Notices of the Poor-Rate should be prepared and sent to every ratepayer, precisely as in the case of the Highway-Rate. Any ratepayer may inspect the original rate-book, and take any copies or extracts.†

It has been already said, that powers of compounding for certain rates have been given by certain late Acts of Parliament. These are chiefly confined to Poor-Rates. It is very important that this should be remembered; but it is often forgotten. The forgetfulness of it will often vitiate a Highway-Rate, or a Church-Rate, or other rate. It has been explained before, that, in the assessment of other rates, the poor-rate books are not to be copied, though the latter may always be referred to for any information. The principal Act bearing on the point of compounding for rates, is the 59 Geo. III. c. 12, s. 19.‡ By this Act, the Vestry of any Parish is declared able to resolve and direct, that the owners or lessors of houses which are let for a term of *less than one year*, or on any agreement reserving payment at shorter terms than quarterly, at a *rent* not exceeding £20, nor less than £6, by the year, shall be themselves assessed to the *poor-rate*, instead of the occupiers.

The sound reason of this Act is, that if owners will build Houses of a class, or let them in a way, which renders it almost impossible for the Parish Officers to collect the Parish taxes, the owners—who of course claim all the benefits of the local

* See the language of Lord Holt in Tawney's case, 2 Lord Raymond's Rep. 1011.

† 6 & 7 Wm. IV. c. 96, s. 5.

‡ Local Acts often contain special powers of compounding. These cannot, of course, be enumerated here. Section 30 of the Highway Act refers to these only.

community for their Houses—must themselves act as Collectors on behalf of the Parish, and be responsible to the Parish for the amount. Nothing can be fairer. The actual occupier, in these cases, rarely comes within the true test of inhabitancy.*

It will be seen that the operation of this Act is limited to cases where the yearly *rent* lies between £20 and £6; and to those in which the term of the actual occupier is *less than a year*, or where the rent is reserved at short payments, as weekly or monthly. These points must always be remembered. Nor can the Parish Officers apply the Act without the express order of the Vestry;—which order may be rescinded, renewed, varied, or amended, at the pleasure of the Vestry.

The Vestry may allow a moderate deduction to be made in assessing the Landlord under this Act; but this should be done very cautiously. Such deductions are only allowable on the ground that the landlord pays the rates, whether the houses are empty or full. After such an assessment, the landlord gets certain *limited* rights as an inhabitant.†

A later Act has been passed (13 & 14 Vict. c. 99) which complicates and confuses where it should have merely filled up. This Act empowers Vestries to order, that the owners of premises of the *rateable value* of less than £6 a year shall be assessed, instead of the occupiers; such assessment to be at three-fourths of the rateable value,—or at one-half, if paid whether the premises are full or empty.

The effect of this is, that, under 59 Geo. III. c. 12, premises‡ of a *rental* between £20 and £6, let to weekly or monthly tenants, can be compounded for as to Poor-Rates. But premises between a *rental* of £6 and a *rateable value* (always reckoned at something lower than the actual rental) of £6, can be compounded for under either that or this Act; while those below £6 rental can be compounded for under this Act only. There are other inconsistencies in the Act, unnecessary to be dwelt on. Such is modern legislation.

The latter Act differs in some other respects from the former. It extends to Poor-Rates and all purposes chargeable on those Rates,§ and to Highway-Rates; to which last the former Act does not extend. Still it does not extend to Church-Rates or any other Rates. The owner will have a corresponding right

* See before, pp. 63, 473, 478.

† See 14 & 15 Vict. c. 39, s. 2.

‡ See before, p. 476, *note*.

§ 14 & 15 Vict. c. 39, s. 3.

of voting in Vestry: not merely the right limited to the occasions of Vestries touching the Poor Law.*

In the case of each of these Acts, the rate may be recovered of the actual occupiers; but the latter can deduct the amount from their rent.

Both these Acts profess to take care, though in rather a clumsy way, of the Municipal and Parliamentary rights of the occupiers.† It would seem clear, as well upon every sound principle as by the spirit of these saving clauses, that not only are their rights in these respects saved whole, but their rights as parishioners remain untouched. It has been shown that *every inhabitant* is entitled to all the rights, and bound by all the obligations, of a Parishioner; and that these rights and obligations remain clearly unlesened by any directing or empowering Act of Parliament, or by any agreement made, over the heads of such inhabitants, with the owners.‡ It would, indeed, be a monstrous thing if power could be thus got to oust half a Parish of its rights of uttering opinion, and its only means of self-protection.

Opportunity of special appeal§ against the Poor-Rate is given by several Acts.|| Notice of appeal, in writing, must be given to the churchwardens and overseers, within a reasonable time before the next quarter sessions after the rate has been made, and must specify the grounds of appeal. The appeal will then be heard before the next quarter sessions. The Act of 6 & 7 Wm. IV. c. 96, directs that, besides the quarter sessions, a special sessions for hearing appeals shall be held in every petty-sessional division, four times every year; of which sessions full notice shall be given. The decision at such special sessions is binding on all parties, unless, within fourteen days afterwards, notice be given in writing of an appeal from it to the quarter sessions, including a statement of the cause of the appeal. In that case, sureties to try the appeal must also be entered into.

* See before, pp. 476 *note*, 480.

† 59 Geo. III. c. 12, s. 23; 13 & 14 Vict. c. 99, s. 7; 14 & 15 Vict. c. 39.

‡ See before, p. 441 *note* †. So clear is the principle, indeed, that the elder cases, on the analogous point of attendance on the court leet, are illustrated by the instance of a row of cottages being built; in which case every cottager would be bound to attend the Leet, "by reason of his residence." Year-Books, 7 Edw. II. fo. 204; 8 Edw. II. fo. 276.

§ See, as to appeal to the Vestry or Assessment Committee, before p. 562.

|| 17 Geo. II. c. 38, ss. 4-7; 41 Geo. III. c. 23.

The only objections that can be taken at these special sessions, are to the equality, and fairness, of the rate. Points as to liability to be rated, must go to the quarter sessions. Notice of appeal to the special sessions must be given to the collector or overseer, seven days before the day appointed for the special sessions.

There is the same power to excuse persons from payment of rates, on the ground of poverty, as in the case of Highway-Rates. In this case, as in that, application must be regularly made, and the inability proved.*

The remedy, on default of payment, is by summons, warrant, and distress; demand having been first made.†

The name of Poor-Rate is very unjustifiably and unconstitutionally used to disguise several other rates. The expenses of Constables, and the County-Rate and Police-Rate, have been already named. The expenses under the Baths and Wash-houses Acts and Burial Acts, are defrayed out of the same Rate. The Borough-Rate, under the Municipal Corporations Act, may also be abstracted, in the same way, from a rate collected under such an entirely different name and pretence. The council of any Borough may, however, order a separate rate to be collected,‡ as is the case with the Watching and Lighting Rate, and Public Library and Museum Rate; and this ought always to be done. Any expenses incurred under section 50 of the Public Health Act, in making or amending any sewers, drains, or wells, and, in some cases, the expenses incurred under the Nuisances' Removal Act,§ are to be charged upon the Poor-Rates. The costs of County and Borough Lunatic Asylums are also cast on the Poor-Rate, as part of the County-Rate,—a mere double delusion.|| Other incidental charges are being continually thrown upon the same rate.¶

* See before, p. 569, *note*.

† See 12 & 13 Vict. c. 14. In the case of persons removing, within the time of a current rate, the outgoing and incoming tenant pay it proportionably; 17 Geo. II. c. 38, s. 12. ‡ See 7 Wm. IV. & 1 Vict. c. 81.

§ It has been already shown, pp. 341, 359, that the matters of this Act are immediately connected with the duties of Highway Surveyors. The cost should, clearly, come out of the Highway-Rates. By the Nuisances' Removal Act, 1855, this has, in accordance with the suggestions contained in the first edition of this work, been made to be so in most cases.

|| See before, p. 574; and Statute 8 & 9 Vict. c. 126.

¶ For instance,—Costs of prosecutions for felony in some cases,—7 Geo. IV. c. 64, s. 25; costs of prosecuting disorderly houses,—25 Geo. II. c. 36,

The whole of this system is bad in principle, and without any colour of reason. Every rate should be made and assessed for its own specific purpose, and no other; or, if there be two or more trifling ones, a General-Purposes-Rate should be made, and the several purposes and proportions should be specifically stated.* It is a simple fraud, to obtain money under one special name and pretence, and to spend it for other purposes, however good in themselves those purposes may be.† It is no more than a device for preventing a knowledge of what is really done or spent in different objects, in the well-doing of each of which all ought to take an intelligent interest.§ The Poor-Rate is now, to suit the ends of functionalism, elaborately and carefully wrapped up and hidden from any possible knowledge, by the ratepayers, of the mode of its application. Thus the monstrous fact that more than a third of the whole sum goes into the pockets of functionaries, instead of being bestowed on the objects pretended, is ingeniously concealed from general knowledge.

The proper mode, in order to save the cost of separate collections, would be, that all Parish rates should be collected by one established Parish officer; and that as many of these rates as can be,—carefully distinguished, as above said, in description, and in statement of proportions,—should be included in one collection. Care should be taken to divide the times of collection so as best to suit general convenience. And no control or interference, external to that of the Parish itself, ought to be allowed, either as to the Officer collecting, or the mode of collection.

s. 5; allowances to constables,—18 Geo. III. c. 19, s. 4; 5 & 6 Vict. c. 109, s. 17; 11 & 12 Vict. c. 91, s. 6; population returns,—13 & 14 Vict. c. 53, s. 19; registration of Voters,—6 Vict. c. 18, s. 57; jury lists and boundaries,—7 & 8 Vict. c. 101, s. 60; added to which are the expenses of Registration, and of Vaccination fees,—6 & 7 Wm. IV. c. 86, ss. 9, 18, 29, 30; 1 Vict. c. 22, ss. 25, 27; 16 & 17 Vict. c. 100, ss. 6, 10. It may perhaps be admitted that emigration expenses (4 & 5 Wm. IV. c. 76, s. 62, and 7 & 8 Vict. c. 101, s. 29) are legitimate expenses for the poor.

* See after, p. 610.

† The sound principle involved was affirmed in an analogous case under an important local Act, in *Douglas v. Clark*, 3 M. & Gr. 485.

§ See before, p. 575.

SECTION V.

CHURCH-RATE.

THERE are few subjects which have ever been more distorted by opposing parties, or in which prejudice has more swayed each side, than that of Church-Rates. Rarely, indeed, has it happened, that the real facts of the case, and the true points involved, have been so completely lost sight of by both parties. It would be impossible to find any one subject which illustrates more completely the truth that, in order to understand the practical working of Institutions, the history of them must be well known to those taking, or who ought to take, their share in them.

The one side pretends, that the church-rate is a Common Law charge on the Land; that the making it is a Common Law obligation; that this can with no more propriety be left unfulfilled than the payment of tithes. On the other side, it is pretended that the rate is an obnoxious impost, and the enforcement upon one man of the support of another man's religion, against conscience, principle, and justice. Of the dissatisfied, again, some propose to keep the rate, and apply it to other purposes;—which assumes that it is actually a definite permanent charge. Others say, loosely, that such a law should “not be retained on the Statute-Book;” which shows singular ignorance, inasmuch as it assumes that this rate is one imposed by some particular and published Statute. Others would, what they call, “abolish church-rates,” without any other idea seeming present than that of getting rid of a tax. Of course this is a sort of proposition that will always gain supporters, who will gladly catch at any pretext.

The facts, all the time, are,—that church-rates are not a Common Law charge at all; much less a charge on the land:—the making them is not a Common Law obligation:—they

* It is explicitly declared, in Jeffrey's Case, 5 Coke Rep. 67, that “*it doth not charge the land, but the person in respect of the land, for equality and indifferency* ;” that is, as the best means of estimating his fair proportion.

are not, and never have been, a definite permanent charge :— they are not, and never have been, imposed under or by virtue of any Statute.*

It has already been shown that the maintenance of the fabric of the church is, by ecclesiastical Law, an obligation on the Parson,† not on the People. The illustrations given in the last chapter, conclusively prove that church-rates have not, as a matter of fact, been *habitually* made or levied in past times ; but that, when the inhabitants did, in any place, on account of the neglect, by the parson, of his obligations, and rather than see their church fall into decay, undertake the repair of the church, they did it out of such moneys as they thought proper, and by no means as the *exclusive* appropriation of any particular fund. In point of fact, funds used to be raised in various ways for the general purposes of the Parish ; and a *part* of these was often spent in necessary repairs of the church. Nay, it has been seen that the more usual way of raising these funds, down to a very late period, was by *voluntary contributions* at the “ales ;” and that one of these “ales ” was even commonly called “the Church Ale.”

But what makes the matter the more striking, is the fact that the one case which forms the Leading Case on the subject of church-rates, and of parish rates in general, itself demonstrates, beyond the possibility of evasion, that neither is such a rate a common law charge on the land, nor is the making of it a common law obligation on the Parish ;—but that the

* The Act of 4 Wm. & M. c. 12, merely includes a part within the whole. It leaves the making of any Church-Rate exactly as it was at Common Law. In fact, the case of *Aston v. Castle Bromwich*, Hobart 66, had already decided all, and more than all, that this Act declares. The same is the case with such parts of the Church Building Acts as allude to repairs. All they do, is to put the District Churches in the position of the Parish Churches. They do not, in the slightest degree, affect the *law of Church-Rates*, or afford the slightest help or sanction to the *imposition* of a rate. See 58 Geo. III. c. 45, § 70, 71 ; 3 Geo. IV. c. 72, § 20 ; and *Cockburn v. Harvey*, 2 B. & Ad. 797,—which compare with *R. v. Dalby*, 3 Q. B. 603. It is indeed remarkable, considering how much is loosely said on the subject of the “Law of Church-Rates,” that the only thing on the subject, in the shape of a Statute, is an “Ordinance” (of course void after the Restoration) of the Long Parliament, dated 9 Feb. 1647. This will be found in Scobell’s ‘Acts and Ordinances,’ part i. p. 139.

† See before, pp. 435, 451. The word “parson” is here purposely used, as before, to express the person on whom the real obligation rests,—so that no one may suppose that the obligation rests on Vicars. See after, 597-604.

making of it, has always been a matter entirely at the pleasure of the Parish. The case is so important, and so widely applicable, as well as so thoroughly intelligible, that it will be useful to give it here at length. It must be remembered, that this is the very case which Lord Coke cites in proof—not of the obligation to church-rates, *but*—of what he lays down as the clear Law of England, namely,—that “*the inhabitants of a parish, without any [special] custom, may make Ordinances or Bye-Laws for the reparation of the church, OR a highway, OR of any such thing which is for the general good of the public; and in such case, the greater part shall bind the whole, without any custom.*”*

“Suit was brought against one A, touching goods taken by way of distress for a rate.† A avowed the taking; *for that* there had been a meeting of the Parishioners of the Church of E, to repair defects in their church; and, because there was a defect in the roof, *they made a tax upon themselves* of the sum of 10 pounds, to repair the defects; and assessed, by their own assent, to levy, for every plow-land, 6*d.*; ‡ for every cow, 1½*d.*; and for every 10 sheep, ½*d.* And the plaintiff had land, and sheep, and cows, to the extent that the sum leviable for them amounted to 9*s.*; and he was a parishioner of the said church; and every other of the parishioners was taxed and assessed according to their share of goods.—And thereupon the Parishioners *appointed two Collectors*, of whom the defendant is one; and they assented that, if the persons who were taxed would not pay, *the Collectors might distrain*. And because the plaintiff would not pay what he was taxed, that is to say 9*s.*, we levied a distress, and avow the taking; and say that *such has been the custom from time immemorial*.

“*Belknap*.—He has avowed on the ground of *assent*, which is one matter; and also on the ground of *custom*, which is another matter.

“*Thorp*.—*It would be very hard to maintain this avowry on the ground of a custom, (namely,) to levy a distress, if there were no assent;—so that the ground of his avowry, is your assent;§ but that assent is of force by the custom.*

“*Belknap*.—We demand judgment, because he has made this avowry for a tax to the Church; *which thing ought to be levied by compulsion of the ordinary*; and as to this *assent* of which he speaks, he shows nothing.

“*Kirton*.—There is a *custom*, through the length and breadth of the land, for Laws called *Bye-laws*; that is, *by assent of the neighbours*, to levy a sum to repair a bridge, or a causeway [artificially-made road], or a sewer; by their assent to assess each neighbour in a certain amount; and that they may distrain for it. And thus, if commoners have common in a certain place, by assent they may ordain, that they shall *not* have common in a certain part, before a certain time, and that if they do so, they may be distrained. And this thing is usual all over the land, and avowry is maintainable *on that ground* in this case: *and if all the neighbours will not come,*

* See before, pp. 47–49.

† Year-Books, 44 Edw. III. fo. 18.

‡ Compare before, pp. 510, 512.

§ That is, *expressed or implied*,—as afterwards stated.

after proclamation has been made of what is to be done, as well will those who make default be bound, as those who are present.

“ Finchden.—If this ordinance be touching a thing which [being left unamended] would be to common hurt [i. e. as Coke well paraphrases it, for “any such thing as is for the general good”], as to make a bridge, or a causeway, or a sewer, you are right; but if it was for the profit of individuals, as in your case of common [that is, by stinting a Common Right inherited by all], no man would be bound, except those who assented to it.†*

“ Thorp.—You do not deny the assent; and this assent was to avoid greater hurt to the people in general.”

So the question was left to turn upon the point of the *assent* of the majority of those present; that is, of whether or not an actual “Bye-Law” had, as alleged, been made at the time and in the manner stated in the avowry.

Two things cannot fail to strike the most careless reader of this case. First; it was not because it was overlooked, that the point of the tax being for church-repair was not pressed. This was named; but was, on all hands, felt to be so beside the mark, that it was altogether dropped; and the case turned wholly on another point. Instead, therefore, of this case supporting any common law obligation for a Church-Rate, it proves precisely the reverse. But, secondly; the whole point on which the case did turn, was, not what the tax was for, specifically, but whether the Parish did in fact make, by their Bye-Law, such a tax. It is most clearly laid down,—and this is reiterated by Lord Coke,—that the Parish has, on any matter touching the general good, the inherent power to make such a tax by their Bye-Law; and that the whole question must

* This is clearly so. See the note to p. 464. The cases of *regulation* of the equal use of the Common Right, as seen in note to p. 48, and in Bye-Laws of Ardley, p. 526, are very different. These are to *secure* the equal rights of all, and to prevent one getting an undue advantage out of what is a Common Right. See pp. 462, 463. But such a bye-law as above named would prevent the exercise, by any, of what is the common right and inheritance, and only give an additional advantage to the individuals who have, in many places, exclusive rights through certain months. (See after, p. 607, note ||.) The very carefulness, in the case in the text, to point out the *limits* of the Common Law powers in this respect, makes the actual fact and importance of those powers stand out the more clearly. The “sewers” named in the case, are sewers against injury by flood and sea-waters. Sewers or Drains against injury by foul drainage, come, even still more plainly, within the definition.

† Thus, even in the case of stinting, those who actually *assent*, are bound: *but they cannot bind others*. It is otherwise in other cases. See the last note. Compare *Cockburn v. Harvey*, 2 B. and Ad. 797; *R. v. Dalby*, 3 Q. B. 603.

always be one of the actualness of the Bye-Law ; that is, of its having been made by the assent of the majority of *those present at a Parish Meeting held after lawful summons*. A Church-Rate is good, not because it is a Church-Rate, but because it is made under a Bye-Law passed in due form, by an Institution of Local Self-Government. A Church-Rate is therefore, and always has been, a rate depending on the pleasure of the Vestry. No obligation whatever exists, or ever did exist, to the making of it. The Vestry has the *power* to make it, as much as, and no more than, it has to make any other rate for any object which is for the common good.

It has been already seen to have been declared, that this matter “is *like to a bridge or a highway*. A *Distringas* shall issue against the inhabitants to make them repair it ; but neither the King’s Court nor the Justices of the Peace can *impose* a tax for it. The churchwardens cannot. None but Parliament can impose a tax. *But the greater part of a Parish can make a Bye-Law*” for a Rate.*

And here another point of great importance arises. The case cited above, draws the clear distinction between common good and individual advantage. A bye-law must be for the *general* good of the local community. The instances given, both by Lord Coke, and in the cases just cited, well illustrate the sense of this. A Road, a Bridge, a Sewer : all these are for common advantage. But to give a few individuals the use of a piece of the Common land for a time, to the exclusion of the rights of the Body of the Commoners, is a thing not for the common good, but a violation of the common right. Many other cases could be cited confirming this.† In one it is varied in a way that makes it the clearer : namely, that a fine imposed by Bye-Law, to be paid to the Lord of a Manor, is unsustainable ; but that one imposed, to be paid to the Parish Officers, is sustainable, and can be recovered.‡

* Before, p. 50 ; and see the *note* below.

† See, for instance, the cases quoted on p. 48 *note* ; and Year-Books, 21 Edw. IV. fo. 54 ; also *James v. Tutney*, Cro. Car. 497, 408.

‡ The terms of this case (Year-Books, 21 Hen. VII. fo. 20) also afford additional demonstration that the Church-Rate never was a Common Law obligation. It runs thus :—“ If the inhabitants of a Parish *choose to make* a bye-law, that every one holding land there, shall yearly pay a certain sum to the Parish Church, and that, *in default thereof*, a fine shall be paid to the churchwardens,—such an ordinance is good.” So there may be either distress or fine, or both.

The application of this material point here is this:—if the Church-Rate is for “singular profit,”—for the advantage of some to the exclusion of the rest,—instead of being for the general good,—it is, *ipso facto*, void. It is not brought under this ban by the fact that every one does not happen to use the church. Every one may possibly not use, or only rarely use, the Bridge, or the Road, or the Sewer, which is made by a tax levied under a bye-law. But every one has the benefit of each of these, whenever he chooses to pass that way; and every one at all times reaps the benefit of the general public advantage that follows from their existence.* It is to the common advantage of all, that such things are made fit for convenient and wholesome use by every one. And this is the whole point, in reality, of the Church-Rate question. The Parish Church is not the church of a sect. It is the church of the people; free to all: which each has the right to use. Therefore, and therefore only, is a Church-Rate sustainable. And the whole question resolves itself into this:—whether it is not for the *general good* that a free church of the people shall remain in England; or whether it shall, by force, be *made unlawful* for the people, if they please to do so, to maintain a church built for the free use of all, and which belongs to all. This is the true bearing of the question. If an Act should pass, as has been proposed, making church-rates illegal, what is really done is, not to *repeal* anything: it is, to *deprive parishes of a power they now possess*; to fetter their liberty to consider and determine on the mode of spending their own money; and to annihilate their Common Right in the Church itself.†

If those who oppose the making of church-rates, understood the very rudiments of the question, they certainly would not run to Parliament at all. They would not seek thus forcibly to fetter and tie the hands of Parishes. On the contrary, they would seek to make the weight of truth and argument

* The cases of the Public Library and Museum Act, and Bath and Wash-houses Act, stand on exactly the same footing. Many others might be cited, including every case in which *imperial* taxation is levied.

† It is obvious, that this will be only another way of insisting that the church shall be *sectarian*, instead of *catholic*; that the Church shall be handed over to specific persons, instead of *all* having their Common Right in it. It is precisely the case of the Commons and the stinted Commoners, as above alluded to, p. 585. It will be robbing the people of their inheritance. See after, p. 607 *note* ||.

felt in the minds of those in their own Parishes. Truth gains no triumphs by force. Yet, in this case, the matter really stands, nakedly put, thus :—Some people fear that parishes will still maintain free Churches : they dislike this. Yet, they have no confidence that they have the strength of truth on their side. So they invoke coercion. They seek to get it enacted that no Parish shall hereafter be *permitted* to do this ! This is a most striking example of how the arbitrary methods of Centralization have already poisoned the tone of thought of men, and blunted their moral perceptions, in England. It is, in fact, an exact copying of the old attempt to coerce opinion by compulsory legislation.

There can be no question raised, as to the Parish Church being the free church of the people. It has been already shown, that every man has the common law right to the free service of all the offices of the church, and to the free use of the churchyard. To whom is this inheritance to go, if, to save the few pence of a tax by which the free church of the people is kept in repair, and which tax is only able to be made and levied by the assent of the majority, the hands of Parishes are to be tied up from their ancient right of making such a rate,—and this is made, as it must be, the excuse for a Statutory support of Churches ? Instead of advancing the true “voluntary principle,” the advocates of the statutory prohibition of church-rates are, in fact, seeking to introduce universal compulsion, both negative and positive, in a matter where it has never yet existed. The mere sectarian opponents of church-rates, though professing so much independence, forget the all-important principle involved ; and, in the eagerness to enter protest against a differing mode of faith, would sacrifice the highest quality and functions of citizenship.

It is plain, moreover, that, if even the *power* to maintain the fabric and decent condition of the church is thus taken away, the now unquestionable right and practice of the Parishioners to meet in Vestry, for the discussion and settlement of their common secular affairs of any sort or kind (a right which has been always, and most properly, thus practically exercised in England), will very soon be attacked also. Those who press forward this kind of liberalism, are thus doing all in their power to destroy the opportunity and practice of local self-government in all departments, and to hand over the manage-

ment of all our secular affairs and interests, either to an exclusive *ecclesiastical* management, or to irresponsible *functionaries*. Never, indeed, were all parts of Lord Coke's sound advice to the Legislator more completely lost sight of than in this case. Neither are the "true sense and sentence of the law now standing" understood, nor is "careful heed taken that a fit and sound remedy be so applied as that, while seeking to heal some past mischiefs, there be not a raising of others far more dangerous."*

But the objectors say, that they resist the rate "for conscience' sake:"—they neither use the Church, nor approve the doctrines taught there, nor approve of Church Establishments. The plea of "conscience" is to be revered. But there is a fallacy on each point. The church is, in fact, used in most Parishes (it ought to be so in all) for Vestry Meetings. It has always been so. The Parish Burying-ground is a matter of plainly direct importance to all, totally irrespective of religious opinions. So of many other matters. You cannot even have a Local Act of Parliament brought in, touching any place, without the Parish Clerk's duties being essential. As to doctrines taught, no part of the "church-rate" goes to the parson. If it did, that alone would make the rate invalid.† What a *part* of it helps to do, is, simply, to sustain the fabric and decent condition of a *Place*, in every Parish in England, to which every man shall have the *right and opportunity* to go up: that is, the Parishioners vote supplies, to sustain the ancient and valuable common right of every man to have the *opportunity* of hearing his Bible read, in a Church that he feels to be his own, without being tacked and ticketed to any sect. The rest goes to salaries, and other payments, which are of equal importance to the whole Parish, totally irrespective of any religious opinions. So far is "the State" from at present supporting the Church, that every Parish Church in England was founded, not by the State, but by individual donation, in ages past; while the parson's income is entirely derived, partly from similar sources, and partly from a charge (far heavier than any Church-Rate) which has been attached, like any rent-charge, to the ownership of certain classes of property for centuries. The State supports neither the one nor the other. What the State does is, impartially to ensure the protection of the

* Before, p. 388.

† *Still v. Palfrey*, 2 Curteis 902.

Law, alike to the ancient property of the Common Church, and to the more recent property (created by similar donation and endowment) of every Dissenting Chapel in the Land. The latter are thus just as much State-supported as the former.

Can it, then, be gravely contended that it is otherwise than for the "General Good" that, throughout the Parishes of England, the right and opportunity of *Place* above named shall be maintained? In times of Romanism, Roman Catholicism was preached in all those places. Since Protestantism became the opinion of the majority, Protestantism has been preached there. When the Presbyterians and Independents got the upper hand, their respective doctrines were preached there:—and then it was, for the first and only time in English History, that a Church-Rate was forcibly *imposed* by Statutory ordinance, whether the Parishioners would or not, and without any control by them over it. But the *place* has remained, through every case alike, the right of the Poor man. It is still so. The Law interferes with no man's opinions. What it does, is simply to recognize the right of the whole body of the Laity in the Church, and to maintain that common right;—precisely as, but no more than, it maintains the same common right in Highways. Any one who objects to bear his share towards maintaining the former common right, is bound, in consistency, to object to bear his share towards Highways or Constables, if he does not happen to use some particular road, or approve of the way in which constables are organized.

It is clear, that if the fabric and decent condition of the Church are not thus maintained, they must be maintained by other means—such as County-Rate or Consolidated Fund;—for it will be difficult, now, to return to the obligation which the Law put, in this respect, upon the Parsons. Every man will thus have an enforced tax to pay; *but there will be an end of responsibility and discussion and Parish control and action* in the matter. "The State" will, at length, be forced to support "the Church;"—driven to it by those who have, "for conscience' sake," resisted "Church-Rates." It needs subtle casuistry to show that conscience may quietly pay for the Church *indirectly*, and when deprived of control or responsibility, while it protests against doing it directly, and when under its own control!

As no one Dissenting Body, whether Independents, Metho-

dists, Unitarians, or any other, can claim that its own members ought, as being the majority, to have exclusive possession of Parish Churches, it becomes a simple question between tolerance and intolerance, religious charity and bigotry, whether, because their own doctrines are not preached in the Parish Churches, therefore they would have all Parish Churches closed; whether, as they cannot have exclusive possession, the *general good* of the Public is not, in the meantime, best served by the Parish Churches of England being maintained (under the eye and with the sanction and control of *all* Parishioners, of every sect) in such state that there may be no Parish in England without *some place* in it where men may go up, as of right, to hear, habitually, that life and man were made for something more than what is merely work-a-day and worldly. Is it to be declared, by a coercive and restrictive Law, that, because individual sects cannot, each, persuade every man to be of their religious opinions, *therefore*, the common right which Englishmen have inherited, through centuries, to have a place maintained in every Parish where every man may go up to worship and commune if he pleases—just as they have inherited the right to have the Highway maintained by which they may go to or from that place—shall be taken away? Those who contribute towards the maintenance of the Parish Church are, plainly, not thereby supporting any particular set of opinions. They are simply supporting the inherited right of every man in England, to be able to find a place where he may go, to worship if he will, and to meet his fellows and transact their common secular affairs when need is.

It cannot be pretended that the exclusive right of use of the Parish Church shall be given up to those who happen to profess one form of faith. The right in the Church is the inheritance of the **WHOLE PEOPLE**.

Unless, then, it is to be maintained that every man who dislikes any particular law, or any particular mode of action of the executive, or any particular shape of authority recognized by the State, may, and is bound, to take upon himself to refuse payment of any national or other taxes, under plea of conscience, no man, whatever his creed, can consistently, or honestly, or in the spirit of Christian charity or tolerance, refuse to recognize the propriety of the Parish retaining the power, which it has always had, of granting, at its pleasure, reasonable and proper supplies to the Churchwardens.

The only real alternative is, that what has hitherto been, by ancient and sound Law and custom, only able to be supplied under responsibility to, and after full consideration and fixing of the amount by, those concerned—in the shape of a Parish Rate—shall hereafter, by a new, restrictive, and compulsory Act of Parliament, be forbidden to be thus considered and supplied; but shall be supplied by the State. The opponents of “Church-Rates” on “Principle” (as they always insist) would thus, to square all others by their own rule of conscience, impose a restrictive law on all the Parishes of England, and force on the country a direct State support of the Church;—at the same time destroying responsible management, annihilating discussion, and rendering impossible any local interest and share in the local well-being, in relation to this matter. These results may be sought to be glossed over, but they are inevitable. Those who strive for “the abolition of Church-Rates,” strive for these results.

Some no doubt think that it would contribute to their selfish ease, to be saved the trouble of all meetings and discussions about Church-Rates, upon Easter Tuesday and otherwise. But it may be well answered, that “nothing could be more appalling to all rational lovers of freedom, than the universal spectacle of governmental machinery, acting with such correctness, celerity, and aptitude as to dispense with the expression of national opinion and the collision of popular discussion.”*

The matter really at stake, then, is a question of constitutional liberty; of responsible administration; of the maintenance of common right; of religious consistency and charity; of free discussion; of avoidance of sectarian domination; of the rights of the Laity in the Church; and of Local interest and share in the management of Local affairs. These are the true matters involved. These are, indeed, matters of real and vital “principle.” The passing of a compulsory Act to prohibit any Vestry from considering, or, however much it may wish it, voting for, a Bye-law to repair the church, is simply to lay violent hands on the spirit of our Institutions; to help in the suppression of local self-government, responsible management, independent thought, discussion, and action, and simple manly honesty; and to set up Bigotry and Intolerance in the nineteenth century in England, to the overriding of civil and reli-

* Before, p. 6, note.

gious liberty, tolerance, and the rights of the Laity in the Christian Church.

To sum up the whole matter:—The *Parish alone* can, by the Law of England, now make the rate: the *Parish alone* can deal with the accounts of the expenditure. Those who desire a “repeal of the Law of Church-Rates” (as it is phrased), are in reality striving, not for the release of the consciences of men from an *imposition*, but for what will truly be a new form of oppression; namely, the *coerced prohibition* against the inhabitants of any place spending their own money over that which they may think for “the general good of the Public;” the *coerced prohibition* against the practice of holding the chosen officers of the Parish responsible to those who choose them; the *coerced prohibition* against the fact and opportunity of practical interest in and discussions on the many important matters involved in the duties of Parishes and Parish Officers and Local neighbourhoods in general; the *coerced prohibition* against the exercise of rights and liberties always heretofore enjoyed by our fathers in England; the *coerced prohibition* against the recognition and enjoyment of the free rights of the Laity in the Church; the *coerced prohibition* against that healthy Parish action which forms the Basis of our national system as a civil State—an action already too much interfered with in other respects, but which at present remains entirely free and unfettered in this matter and what arises out of it. Parish action (where, as is the case in by far the greater number of Parishes in England, no other municipal forms exist) now constitutes in England the soundest and only school for educating men to understand and appreciate the business and conduct of public affairs;—a branch of practical knowledge which no books can teach, but which has hitherto been the distinguishing characteristic of Englishmen, and which is absolutely necessary to the maintenance of freedom in any State, and to the ensuring of the Public Safety. The *coerced prohibition* (which the opponents of Church-Rates seek to enforce) of the responsibility of Churchwardens to the Parish, of free discussion, and of self-government, would be an irreparable blow to the practical freedom of our Institutions, on the obvious grounds of general principle and policy, as well as being a mere act of restrictive tyranny in itself. Such a Law, be it observed, will be *simply restrictive*. It will confer no boon nor liberty: it will deprive of a power

of independent thought and self-reliance. It will be one to *prohibit* the exercise of a right of discussion and action which now exists.

Instead of such a decision as that in the Braintree Case* giving any pretext for legislating on the matter, that case shuts the door on even any excuse for legislative interference. It affirms the reality and soundness of the Common Law, as shown in this volume.

All pretence for any legislative interference on the subject of church-rates is, in fact, taken away by the decision of the House of Lords in the Braintree Case. It now rests, beyond dispute, with parishes themselves, and with them only, whether they will have any and what church-rate. Statutory dealing with the matter will only afford further opportunity, and even necessity, for interference with the free action of local self-government; and will thus help to extend and strengthen the inroads of centralization and irresponsible functionarism.

There is no doubt that those who entertain feelings of reverence or affection for the special doctrines and ceremonies of the established church, will always be ready to support its needs. But this readiness is a question quite apart from that of whether or not the Parish church shall cease to be a church which is the free right of every man.†

As regards church-rates themselves, there is no doubt that, if no Act interferes, instead of the increase of bitterness, such feelings will be much lessened, now that the law can no longer, since the decision in the Braintree Case, be misrepresented, as it so often used to be. It is clear that, so long as any minister, and the members of any creed, fancied themselves able, or were fancied to be able, to enforce compulsory support, unkindly and unchristian feelings must have grown up. Human infirmity showed itself in the assumption of a tone of power and superiority. Bickerings thus became frequent. There hence grew up, unquestionably, less care to conciliate, and to win the support that springs from real love and sympathy. All this is now put right by the simple re-declaration of the Common Law. What cannot be claimed haughtily as the right of the strongest,

* *Burder v. Veley*, 4 H. L. Cases, 679.

† There is no pretext for church-rates for the churches under the Church Building Acts. These want all those characteristics which distinguish Parish Churches. And, while without these, they have pew rents. They thus stand precisely on the footing of any other merely sectarian Meeting-houses. See before, pp. 59-42 *note*.

will be readily yielded, by all right-minded men, in return for a wider range of active Christian sympathy and charity in what is, plainly, for the Common Good of all. Extraordinary as it is that the question should ever have been so much misunderstood as to have been contested, its authoritative settlement has removed a bone of contention, which has interfered grievously with goodwill and neighbourly kindness.

As regards the making, assessing, and levying of Church-rates, the same course is to be taken as is done in respect to other rates made by the Vestry.*

The Churchwardens are bound, before asking for a Church-Rate, to give to the Vestry an exact Statement of their accounts, as standing at the time, and as derived from all sources; and also to give as exact an estimate as they are able of the expenses which they will have to meet. They cannot pay money first, and then ask for its reimbursement.† This would be neither more nor less than an attempt at irresponsible management. They must ascertain what their expenses, in salaries, repairs, and all other legitimate things, are likely to amount to; and then, before paying any one of these, they must lay the whole estimate before the Vestry, and ask for a rate to enable them to meet them. A retrospective rate is wholly vicious in principle, and bad at Law.‡ There can never be any excuse for it, as the obvious course, above named, is the one which common sense and common honesty alike dictate.

Though no Court can require a rate to be made, the Court of Queen's Bench will, very properly, if the Churchwardens fail in their duty, grant a *mandamus*, requiring them to summon a Vestry "in order to inquire and agree *whether it be fit* that a rate should be made."§

* There is sometimes a pretence at "confirmation" of the rate by the Ordinary. But this is not only quite unnecessary, but clearly *improper*, and a mere illegal assumption. The very principles on which the rate rests prove this. See pp. 584-586. If the ecclesiastical Authorities meddle at all in such a matter, it should be to see that the parsons fulfil the Law which requires, as already shown, that the Church should be kept in repair by them. See before, pp. 307, 308, 451.

† See pp. 102, 565, 606.

‡ *R. v. Dursley*, 5 A. & E. 15; *Piggott v. Bearblock*, 4 Moore P. C. C. 399. It must be thus retrospective on the face of it. If some items only are *alleged* to be retrospective, the matter must be raised on the allowance of the accounts. See *R. v. Sillifant*, 4 A. & E. 361; and *R. v. Gloucester*, 5 Term Rep. 346. See also, after, p. 606.

§ *R. v. St. Margaret*, 4 M. and S. 253; and see *R. v. Wix*, 2 B. & Ad. 199.

There have, indeed, been some Acts passed to enable Churchwardens to borrow money upon the credit of Church-Rates. But this is only in very special cases, and always with the full and formal previous consent of the parishioners, in conformity with the Common Law.* And the rate made to repay the interest and principal thus borrowed, must always be made quite distinct from the Common Law Rate itself.†

It has been already shown, in an earlier chapter, that full Notice must be given of the Vestry Meeting at which it is intended to ask for a rate; and that, in such notice, the intention to ask for the rate itself must be stated.

No particular *form*, nor set words, are necessary in making the Rate. It is sufficient if the intention and purpose are obvious on the face of the Bye-Law granting the Rate.‡

There is no "allowance" nor "publication" of a Church-Rate; its validity resting entirely on its being made in open Vestry, after full notice given of the intention to propose it.§

When made, the rate should be forthwith collected; || and Notice-Papers should be sent round as in case of other rates.¶

None of the Acts, as to either appeals or compounding, applies to the case of Church-Rates. The appeal, in any case of alleged unequal or unfair rate, will therefore be to the Vestry or Assessment Committee. The legality of the rate itself may of course be disputed on any case of distress for nonpayment.

It has been already seen, that the Common Law provides fully efficient remedies for recovery of the rate.** It will be necessary, however, that the Collector be appointed by express and specific vote of the Vestry; and that his appointment include, in specific terms, the power to distrain for nonpayment.†† The Churchwardens cannot themselves appoint a Collector with such powers.

The statute of 53 Geo. III. c. 127, s. 7, made provision for the issue of a summons to defaulters, whereupon an "order" for payment may be made. The disobedience of this order is

* 58 Geo. III. c. 45, ss. 59, 60, 61; 59 Geo. III. c. 134, ss. 14, 24, 25, 40; 5 Geo. IV. c. 36. See *Rogers v. Davenant*, 1 Modern, 236; also, after, p. 606.

† *R. v. Pembroke*, 5 A. & E. 603; *R. v. Abney*, 23 L. J. M. C. 154; *Smith v. Deighton*, 8 Moore P. C. C. 179.

‡ *R. v. Crook*, Q. B. 29 Jan. 1857. See also, *R. v. Byrom*, 12 Q. B. 321.

§ See before, pp. 561, 567.

|| See *R. v. Crook*, Q. B. 29 Jan. 1857.

¶ See pp. 567, 595 note *.

** Before, pp. 178, 179, 564, 586 note.

†† See the case on p. 584.

to be followed by a distress-warrant. The person affected has, however, under the same Act, an appeal from the order of justices to the quarter sessions. But this is a much less efficient and less responsible method than that provided by the Common Law, as already stated. It is no safer for the ratepayer, as no distress can ever be made until after *demand* of the rate; while the sense of responsibility, in the Parish authorities, is kept more alive by the Common Law method.* Moreover, this Statutory remedy is a perfectly futile one, as the Justices cannot proceed against any one who chooses to say that he disputes the validity of the rate, or his own liability, however absurd, frivolous, or inconsistent the pretended grounds of disputing either of these may be.†

It is quite plain, therefore, that the only practical method to adopt, and that which must be most satisfactory to all concerned, if they be honest, will always be the Common Law method, of a Collector appointed by Vestry, with proper powers, as already pointed out.

It must be always remembered, however, that, whatever means be adopted to collect the rate, these can only be put in motion after, and as a consequence of, the fact that the inhabitants, in full Vestry assembled, have, by their own voluntary act and assent, taxed themselves to such a Rate.‡

Note on the Purposes of Church Endowments.

It seems necessary, in order to prevent misapprehension, to notice here the attempts that have been made to evade the plain language of the ancient records of the Law, as to the original liability of the fruits of Benefices for the maintenance of the fabric of the Church, and of the Poor. The former

* What is said on another matter, already referred to, p. 405, applies here : that "as for the great power that it seems to allow to these [officers], it is at their own peril if they [distrain any man who is] not really [liable]." *Vaughan v. Attwood*, 1 Modern Rep. 202.

† *Dale v. Pollard*, 10 Q. B. 504 ; *R. v. Crook*, Q. B. 29 January, 1857.

‡ See *Smith v. Deighton*, 8 Moore P. C. C. 179. The soundly constitutional terms of the considered judgment in the case of *R. v. Dalby*, 3 Q. B. 603, are well worthy to be remembered. They involve the whole Principle. "It does not appear that the Foston people were summoned to consider of the rate : which would make the rate invalid, if the custom required it ; if the custom does not require it, the custom cannot be legal."

is alluded to above, pp. 308, 435, 451, 583 ; the latter before, pp. 28-30, 144, 308, 451.

What Henry VIII. got possession of (see before, p. 144) were landed properties given and held in absolute and positive trust ; and were thus distinct from the tithes. An examination of the "*Valor Ecclesiasticus*," made in consequence of Stat. 26 Hen. VIII. c. 3, will best make this understood. In general language, however, the distinction is not of moment ; as the fraud and robbery have been equally great in respect to both classes of property.

Three tracts, published by Archdeacon Hale in 1832, 1833, and 1837, on "the supposed existence of a quadripartite and tripartite division of tithes in England," and on "the antiquity of the church-rate system," may be taken as best representing these attempts at evasion. I shall best refute these and all other such attempts, by simply bringing together, without entering on controversy, quotations from documents extending over more than eight hundred years ; which, though not all that could be cited, are, from their character, such as must carry conviction to every honest man.

Archdeacon Hale does not seem aware of,—or, if aware of, he avoids quoting,—some of the most striking of the authorities that have been already cited in this book ; and which, alone, negative his facts, and neutralize his arguments. As to some authorities, which he attempts to evade by setting forth alleged uncertainties as to their origin, he forgets that it is the fact of the unquestionable *existence* of those authorities which has to be dealt with. Whoever were the authors of the Canons of Egbert and Ælfrie (see before, p. 308 note), those documents unquestionably exist, and have for centuries been accepted. The points contained in them clearly indicate, then, the law and opinion of the times from which they have come down to us. Written and preserved by ecclesiastics, it is certain that their testimony is unimpeachable in whatever concerns the Church's liability. Moreover,—a most important fact,—the great Commentators, Acton (or Athon) and Lyndwood, treat the main point which is involved as being *unquestionable* and notorious ; a fact which is conclusive in itself, but which has escaped Archdeacon Hale's observation,—or, at any rate, his remark.

The argument which the Archdeacon seeks to raise against the right of the Poor in the fruits of benefices, amounts to no more than a quibble, and certainly a very unworthy one. The Trustees under a marriage settlement, or those of any Public Charity, undoubtedly have the technical legal title ; but who will venture to pretend that they have the absolute right to the property, and that the claim of the children or the Charity on them is not an obligatory one ? Yet such is the only argument by which the right of the clergy to the absolute enjoyment of church endowments, can be maintained by their staunchest advocate ; who actually affirms, in the face of the authorities that have been and will presently be quoted, that "the constitution recognizes no other right of the poor to share the revenues of the clergy, than that which, according to the present practice of the beneficed clergy, they most amply enjoy." (Tract i. p. 41.) It will be seen that the poor have as absolute a right to a portion of the fruits of benefices, as the Clergy have to any part whatever of those fruits.

"The custom is, that whatever is given [to the Church] shall be divided into four parts : one to the Bishop and his family ; the second to the clergy ; the third to the poor ; and the fourth to repair the church." [Mos autem

sedis apostolicæ est, ordinatis episcopis præcepta tradere ut *in omni stipendio quod accedit*, quatuor debeant fieri portiones: una videlicet episcopo et familiæ, propter hospitalitatem atque susceptionem; alia clero; tertia pauperibus; quarta ecclesiis reparandis.] Pope Gregory's reply to Augustine, A.D. 593. Smith's Bede, p. 62. This is stated as the *usual course*. For special reasons, that custom was not to be immediately applied in England by Augustine, as to the Bishop's share at least: but it is plain that, as to the other matters embraced, the usual course would apply. It will be seen that, in the opinion of the most eminent Canonists, it did apply.

The Bishops in England being otherwise largely endowed, their share in the tithes seems never to have been in practice with us. Hence the *quadripartite* division became here a *tripartite* one; though it seems probable that it was still a fourth of the whole (and not a full third) that went to the repair of the Church, and a fourth to the poor, as stated in the preceding quotation. See the allusions of Acton and of Lyndwood, presently quoted.

"The tithes shall be divided: and one part shall go to the ornamenting of the church; the second to the use of the poor and of strangers; the third to the priests themselves."—Canons of Egbert, A.D. 750, quoted before, p. 308, from Spelman. Archdeacon Hale himself says that, "in matters both of secular and ecclesiastical antiquity," the authority of Spelman, "stands pre-eminent." (Tract ii. p. 42.) Spelman admits this Canon without question. He even adds, as illustrating the great authority recognized, from the earliest times, to attach to these Canons, that, notwithstanding the destruction by fire of several of the ancient copies, there yet remained, in his time, many copies, beautifully written, and of the highest antiquity. [Certum est, magno olim fuisse pretio; nam post veterum manuscriptorum codicum insignem cladem, quæ Cœnobiorum subsequuta est catalysim, supersunt hodie diversa earundem exemplaria, splendide quidem et antiquissimè exarata.]—Concilia, p. 275.

"We have also ordained; that every bishop repair the house of God in his own [district]; and also remind the king that all God's churches be well provided [endowed], as is very needful for us."—Ecclesiastical Laws of King Edmund, A.D. 940–946 (Thorpe's ed. 1840). This passage is wrongly quoted by Archdeacon Hale. The latter part of it seems unquestionably to refer to securing a sufficiency of endowments towards maintaining the repair of all churches. This order was put forth by a Synod of Bishops.

"And we enjoin that the priests so distribute the people's alms, that they do both give pleasure to God, and accustom the people to alms. And the right is, that there be appropriated [mán betæce] one part to the priests; another part to Church-repair; the third part to the poor."—Canons enacted under Edgar, A.D. 959–975.

"Respecting tithe: the king and his witan have chosen and decreed, as is just, that one third part of the tithe which belongs to the church, go to the reparation of the church [eapic-bote]; and a second part to the servants of God; the third to God's poor, and to needy ones in thralldom."—Laws of Ethelred, IX. s. 6, A.D. 978–1016. This passage is strikingly illustrated by another, contained in another part of the same body of Laws, distinguished as those of the 'Council of Enham':—"If a 'god-bot' [penalty to God] shall arise, which the wise secular witan may have set as a penalty,

this belongs lawfully, by the direction of the bishops, to the buying of prayers, to *the behoof of the poor*, and to *the reparation of churches*, and to the instruction and to the clothing and to the feeding of *those who minister to God*, and for books, and for bells, and for church garments.”—*Ib.* VI. s. 51.

In the Laws of Canute, the liability to the repair of castles, bridges, etc. (see before, pp. 104, 462, 469), is explicitly stated; and these being special obligations, a penalty is affixed if the fulfilment of the obligation is neglected. But it is a remarkable confirmation of the fact that no separate liability existed on any persons, *except those actually in possession of Church endowments*, to the repair of Churches, that, though an allusion to the repair of Churches immediately follows, no penalty is there mentioned. The *tythe* being already in part appropriated to this purpose, the characteristic and correct expression is, simply, that, as a matter of fact, all persons help towards this repair, “according to (or, by means of) the right” [*mið rihte*]; a phrase which clearly *excludes* the imposition of any separate charge or obligation, in this regard, on the parishioners. “The right” is, the part of the *tythe* which was thus appropriated. The following is the passage:—“If any one neglect the repair of fortifications, or of bridges and highways, or of military duty, let him make amends [penalty] with one-hundred and twenty shillings. . . . To the church repair shall all folk help, by means of the right.”—Laws of Canute, s. 66, A.D. 1017–1035.

“The tithes shall be divided into three parts; one to the repair of the Church; the second to help the poor; the third to God’s Ministers, who attend the church there.”—Canons of Ælfrie, A.D. 1052, quoted before, p. 308 *note*. The remark as to the Canon of Egbert, above, applies here also.

What obligations have always been imposed on the Clergy, in respect to the services of the Church, in return for the share of the tithes thus appropriated to them, has been already shown, pp. 451–456.

“As, in the house of God, nothing ought to be unbecoming, we enjoin that the parsons and vicars of the churches shall take care to make provision, according to the respective incomes of each, as reason dictates, and approved custom demands, whensoever the churches which need repair are being repaired.” [Cum in domo orationis, quæ domus Dei nuncupatur, nihil debeat esse indecens, nihil inordinatum, præcipimus, ut personæ, et vicarii ecclesiarum, studeant providere secundum competentes eis pensiones, prout ratio dictitat, et consuetudo approbata postulat, quatenus ecclesiæ, quæ reparatione indigent, reparentur.]—Canon VI. of 1195, i. Wilkins’ Concilia, p. 502.

In 1240, a large body of the clergy replied to some demands made upon them by the Pope’s legate, almost in the identical words of the Canon of Ælfrie just quoted:—“The endowments of churches have been made for fixed uses: namely, of the church [fabric], of the ministers, of the poor.” [Item cum ex auctoritatibus patrum sanctorum, fructus ecclesiarum in certas usus,—*putà*, ecclesiæ, ministrorum, et pauperum,—sint deputati.] Archdeacon Hale wholly misrepresents this important passage, omitting the very significant “*putà*.” The same reply of these clergy goes on to state, that “the churches were endowed *on the special condition* that the rectors should entertain hospitality of poor as well as rich, of laity as well as clergy.” [Eædem ecclesiæ sint per eosdem patronos terrarum ac reddituum propter hoc specialiter collationibus dotata, aut ditata; ut rectores earum suscipiant hospites tam divitum quam pauperum, sustinentes hospitalitatem tam

laicorum quam clericorum, secundum suas facultates, locorum exigente consuetudine.]—Matthew Paris, p. 478 (ed. 1684).

In 1246 the clergy of England again drew up a reply to certain demands of the Pope ; in which reply they enumerated, as part of the *obligations* to be discharged out of the incomes received by them, the “ showing great hospitality, and giving provisions to the poor inhabitants ” [sit obtentum et de consuetudine observatum, ut rectores ecclesiarum parochialium hucusque valde hospitales extiterunt, et parochianis ad inopiam vergentibus alimenta præbere consueverunt] ; and that “ a special obligation on those incomes consisted in the reparation of the churches and the ornaments thereof ” [ecclesiæ oneribus, CONSISTENTIBUS in pensionibus, prælatorum procuracionibus, et ecclesiarum et ornamentorum reparatione.]—Matthew Paris, p. 626.

In articles prepared by Archbishop Boniface, A.D. 1257, who has been already alluded to,—which articles, although disallowed, afford to us on that account but the more unimpeachable testimony on this subject,—it is expressly stated, that “ if the parishioners are cited for refusing to contribute to the repair of the church, a *prohibition* is granted by the King’s Court.” [Si petatur pecunia ad ecclesiam cooperiendam, vel cœmeterium claudendum, et parochiani ad hujusmodi præstanda extiterint rebelles ; si conveniantur coram loci ordinariis, statim porrigitur regia prohibitio.]—Art. xxviii., Wilkins’ Concilia, vol. i. p. 728. This was, of course, because the demand was unlawful. See as to these Articles, Coke, 2 Inst. 599.

It has already been seen, that by one of the Canons of Othobon, made in the Council of London, A.D. 1268, the clergy were required to “ maintain and restore the buildings of the churches at their own expense ” (before, p. 307, note †). A Canon of Archbishop Edmund, A.D. 1236 (Lyndwood, p. 250), is very precise to the same effect ; its very title being, “ *De Ecclesiis edificandis.* ”

It appears, by a short clause introduced at the end of this Canon of Othobon, that, in some places, the custom of the Parish repairing the nave had then grown up. But that the instances must have been very rare, is plain, both from the way in which it is put in this place, and from the facts which follow. The comment of the annotator confirms this. This is further confirmed by a Canon of Archbishop Stratford.—Constitutiones Provinciales, p. 50.

By a Canon of Archbishop Peccham (A.D. 1281), the absolute duty of the rectors to provide for the poor was again affirmed.—Lyndwood, p. 133 ; and Const. Prov., p. 26.

The Statute of *Circumspecte agatis* (A.D. 1285)—quoted by Archdeacon Hale, with a strange perversion of the facts, as a Law for Church-rates ; with which it has nothing in the world to do—seems to allude plainly to the disputes which had, even then, grown up, as to what part of the obligations, all belonging to the clergy, should be discharged by the rector, and what by the vicar ; the bishops being bound to see that their respective obligations were fulfilled.* Hence it speaks of “ the bishop punishing for a church

* “ Provideat diocesanus, pensata ecclesiæ facultate, utrum vicarius onera ecclesiæ subire debeat, an persona, an ea simul debeant uterque hæc conficere.”—Constitution of Archbishop Stephen (A.D. 1222). Const. Provin., at end of Lyndwood, p. 3 ; and see before, p. 307.

not made, a cemetery not enclosed, a church uncovered or not decently furnished." [Si prælatus puniat pro ecclesiâ non factâ, cœmeterio non clauso, ecclesiâ disco-opertâ, vel non decenter ornatâ.]

"It is enjoined, that the clergy, according to their benefices, *shall be compelled* to distribute, yearly, a fixed amount to the poor of their parishes, *under penalty of sequestration*." [Hujus approbatione concilii statuimus, quod religiosi in nostrâ provinciâ beneficia ecclesiastica obtinentes, secundum beneficiorum hujusmodi facultates, annis singulis, pauperibus parochianis beneficiorum eorundem, certame leemosynæ quantitatem, ordinariorum ipsorum locorum moderanda arbitrio per ipsos episcopos distribuere, compellantur, per pœnam sequestrationis, et subtractionis fructuum, et proventuum beneficiorum hujusmodi, donec in præmissis paruerint competenter.]—Canons of Archbishop Stratford, 1342. Lyndwood, pp. 133, 134.

The *Statute of Carlisle* (A. D. 1306) has been already quoted (before, p. 28); which specially states, that churches were endowed "*to the intent* [among other things] that sick and feeble men might be maintained, and hospitality, almsgiving, and other charitable deeds be done."

The Statute 25 Edw. III. (A. D. 1350) has also been quoted (before, p. 29); which declares "the Church of England to have been founded [among other things] to make hospitality, alms, and other works of charity;—and that possessions were assigned *to sustain the same charge*."

In the Statute 3 Rich. II. c. 3 (A. D. 1380) it is declared, that whereas "Churches, etc. were founded, *to the intent* the benefices should be given to honest and meet persons of the realm, to serve and honour God diligently; and also to keep hospitality; etc.;" but the same have become perverted by persons who "only thereof have and take the emoluments and temporal profits, not having regard to the spiritual cure, nor to the other charges to the same benefices pertaining or belonging [see before, from M. Paris]; but manifestly *suffer the noble buildings, in old times there made, wholly to fall to decay* [thus clearly showing that the maintaining these was then held to be one of the 'charges to the benefices pertaining']; whereby the Divine Service is greatly diminished, etc."

The Statute 15 Rich. II. (A. D. 1391) required that a definite proportionate "sum of money *shall be* paid and distributed, yearly, of the fruits and profits of the same churches, by those that shall have the same churches in proper use, and by their successors, to the poor parishioners of the said churches, in aid of their lives and sustenance, for ever." See before, p. 30:

Aetion or Athon, the commentator on the Canons of Othobon, (A. D. 1290) says, in the most explicit manner:—"Of *common right*, the fabric or reparation of the church pertains, *at this day*, to the Rector, who has the fourth part [of the tithes], *set aside for the fabric of the Church*. So that the laity, of *common right*, are not compellable to this. But, by *custom*, the laity are liable to this reparation."—Const. Othob. p. 113. See before, pp. 308, 309.

The same Commentator says, in another place, concerning the alms *due to the poor*, that these "seem in truth to be *at least one-fourth* of the income of the Church." Const. Othob. p. 126.

Archdeacon Hale does not cite either of these passages. They would have been fatal to the argument he seeks to maintain.

Lyndwood, the elaborate Commentator, and universally acknowledged authority, on the Canons of the English Church, writing in 1422, says:—"The

reparation of the Church pertains, *by common right*, to him who receives that fourth part [of the tithes] which, from of old, was *assigned to the fabric of the church*. And so, *by common right*, this pertains to the rector, who has that fourth part, *and not to the parishioners*. *Custom*, indeed, transfers the burthen of repair, at least of the nave, to the parishioners, and so of the chancel sometimes. And this *custom* the parishioners ought to be obliged to keep, WHERE SUCH IS THE CUSTOM."—Lyndwood, p. 53 (ed. 1679).

In another place, commenting on an attempt of Archbishop Winchelsey, (A.D. 1305)—the very character and terms of which prove its novelty—to impose certain charges on the Parishioners, this eminent Canonist, himself an ecclesiastic, uses this remarkable language:—"As to what he says, that the repair of the nave of the church pertains to the parishioners, this must be understood as [alluding to where it is so] by *custom*; for it is otherwise of *common right*."—Lyndwood, p. 253.

Again, as if to leave the case free from possible doubt, he says, in another place, on the Constitution of Edmund above referred to;—"The custom ceasing, recourse must be had to the portion [of the tithes as before shown] set apart for the Church; and so *he* will be held to the Repair, *who receives* that portion. Where there is *no custom*, nor such a portion assigned to the fabric, or that portion is not enough; then *those who hold the benefices of the Church have to do the repair*."—Lyndwood, p. 250.

Archdeacon Hale cites none of these passages. They would entirely upset his attempt to deny the actual History and Law of Church endowments.

Thus, however, these great Canonists not only admit but emphatically declare that, at *Law*, and by *Common Right*, it is the Rector who is liable for the repair of the whole fabric of the Church; and that it is only by *custom*, and where such a custom has grown up and exists, that the parishioners have taken the repairs upon themselves.

It has been already seen, by the oldest cases on the subject preserved in the records of the Courts of Law, that, during the very same time that the documents above quoted were being penned, the Courts knew nothing of any obligation on the Parish to repair the Church; but so completely the contrary, that they only supported Bye-Laws for a Rate to repair the Church, on the ground of the analogy of the making of such a rate to other powers of a similar nature, exercised by the Parish according to Common Law. See before, pp. 48-50 and *note*, 584-586 and *notes*.

In the quotations thus given, it has been obviously most convenient to give, in one group, those relating to the right of the poor in the income of the church, and those relating to the repair of the church fabric. Some of them include, according to circumstances and their main object, one of these things; some the other; some both. The general result is not capable of evasion, as to either.

The spirit indicated through these quotations, has already been shown to have been re-declared, as regards the poor, in the Injunctions of Elizabeth and Edward VI. (before, p. 95 and *note*). The Statute 25 Hen. VIII. c. 25 might have been quoted to the same effect. But further illustration seems needless.

The proposition stated as to Church-Rates, at the beginning of this Section, and before, pp. 435, 436, has been thus conclusively established. It will be more than ever clear, from these quotations, that the Church in England, as

an Institution, was, in its foundation,—as it should be the aim of all good men to make it in reality—the *Church of the People*. The quotations that have been here brought together, are entirely consistent, and are consistent only, with the facts as to Rates that have also been established in the present Volume. Those facts and the above quotations throw mutual light on one another.

As regards the fabric of the Church, it seems plain that the encroachment by which the maintenance of this has gradually got thrown off the fruits of the benefices, originated in the very frequent squabbles (no other word can be properly used) between Rectors and Vicars, as to who should bear the burthen of the obligations attaching to the benefice. (See above, p. 601, *note*.) Of these squabbles several examples have already been given, and innumerable ones might be added. In the meantime, while they were going on, the fabric fell into neglect and disrepair; and sooner than see this happen, the parishioners, from time to time, of their own free will, did the needful repairs (see before, pp. 309, 583); and the Courts of Law very properly upheld their *power* and right to do so. The holders of the fruits of benefices took advantage of their own wrong, and by degrees habitually left the parishioners no resource, but themselves to keep in repair the part which they used—namely, the nave. Thus the pretence of a *custom* grew up; though the actual Statutory Law of the church remained all the time imperative and unaltered (compare pp. 301 *note*, 453 *note*). See also p. 446, as to the date necessary to a sufficient custom; which cannot be inferred here (see before, p. 42), because the actual facts to the contrary remain specifically recorded.

It is no less plain that, if any change is to be made in the mode of sustentation of the fabric and ornaments, etc., of the Church, the absurd proposition, to deprive the parishioners of their power and right to spend their own money as they like, can do nothing towards it. Requiring the rector of every Parish to do what is needed out of the profits of his benefice, would, indeed, be a proposition having a meaning, and one in simple restoration of the Law and the actual purposes of church endowments. The changed circumstances which the endowments of many Parishes have undergone, would, however, make this not always consistent with equity. It is certain that neither Restoration nor Legislation will really avail, except for evil, until, through all society, the *spirit* of that Law is felt again, whose whole tone has been shown to have been, that the Church in England is the undoubted Inheritance and *Free Church of the People*.

SECTION VI.

BURIAL-RATE.

THOUGH it has been seen that the expenses of Burial Boards are, by a strange anomaly, made a charge upon the Poor-Rate, the great number of new burial-grounds that have lately been made, renders it desirable to say a few words on the means of defraying the cost thus incurred.

To carry out the objects of the appointment of such "Burial Boards" as are named in the Burial Acts of 1852 and 1853, large sums of money will often be required. The rates for this purpose ought clearly to be separate and distinct.* The cost, however, under these Acts, always forms a charge on the Poor-Rate.†

The Vestry has, as in the case of the Lighting and Watching Act, to fix a sum beyond which the Board is not to go. The Board then sends a certificate, under the hands of not less than three of its members, to the Overseers, stating the sum required. The latter have no choice but to pay the money; not, as in the case of the Lighting and Watching Act, raised by a separate rate, but out of the Poor-Rate itself.

But, beyond this, the Board has the very serious power given it of burdening posterity.‡ It may, with the sanction of the Vestry and the approval of the Treasury, borrow moneys, and charge the future Parish Poor-Rates with the interest and repayment. In such case, not less than a twentieth of the sum borrowed must be repaid, as well as interest, every year.

* See before, pp. 575, 580, and 581.

† Before, p. 449 *note*. It has already been seen that the cost of burying bodies cast on shore comes out of the County-Rate. See pp. 158, 448.

‡ 15 & 16 Vict. c. 85, s. 20. This course is, perhaps, more justifiable in the case of a Burial-ground than in any other case. In the case of Drainage Works, and others, as to which it has been of late years introduced, in order the easier to carry out certain procrustean dogmas, it is purely mischievous. It is tying up every place where it is adopted, from the power of applying, and so of emulating, through all that time for which the burden is imposed, such improvements as progressive science and experiment may devise. It is

hanging a millstone on the neck of progress. While, naturally, improvements are being continually discovered, the hands of a neighbourhood which has thus mortgaged its credit for thirty or twenty years, are effectually tied up for all that time. It is best to pay for a war while you are in it ; and to pay for works as you do them. Thus alone can responsibility be maintained. This alone will prevent carelessness, stop jobbing, and stimulate the most active effort to find the *best* means at every time. See before, pp. 102, 159, 565, 595. The principle involved in all these cases is, in fact, the same as is involved in the power of borrowing money, under the delusive pretence that it is not an immediate burthen, but one to be paid off in futurity.

The language used by the Court of Queen's Bench, in a case which itself arose on the attempt to enforce a rate to repay the interest and part of principal of borrowed money, puts the matter well :—"It is a general rule with respect to Parish rates, founded on obvious principles of policy and justice, that they are not to be made retrospectively. The payers being a fluctuating body, nothing, generally speaking, is more just, or more likely to conduce to economy, than to hold that they who create a charge shall themselves bear it." (*R. v. Dursley*, 5 A. & E. 15.)

See further on this subject, before, pp. 102, 159, 565, 595 ; and the cases of *Dawson v. Williams*, *Lee's Cases Temp. Hard.* 381 ; *Lanchester v. Thompson*, 5 Maddock, 4 ; *Farlar v. Chesterton*, 2 Moore P.C.C. 330 ; *same*, 1 Curteis, 345 ; *Griffin v. Ellis*, 11 A. & E. 743.

The case of *easing the immediate payment* of a work made necessary in order to remove a direct nuisance (as by assessments under the Nuisances' Removal Act ; see pp. 346, 572) stands on a very different footing. Such assessments are, indeed, obviously right on the precise grounds stated in the above-quoted judgment.

SECTION VII.

AMERCEMENTS, AND PENALTIES UNDER BYE-LAWS.

THE Law has been shown to recognize the duty of every man to take on himself, at the appointment of the Vestry, certain offices.* The taking of such offices is best secured by fixing amercements in case of refusal or default. Examples of Bye-Laws, fixing these and other amercements, have already been given.† The best course, whenever the case arises, is, to pass an express resolution, or Bye-law, reciting the general Bye-laws adopted by the Parish in reference to amercements for default; setting forth that A. B. has made default in taking and executing the duties of the office of Churchwarden, Surveyor, Overseer, etc., to which he was appointed by the Vestry, or has made such other default as incurs a penalty; and proceeding to declare that he has thus become liable to pay the sum fixed, to and for the use of the Parish. The Churchwardens should then be instructed to take the necessary steps to obtain payment of such penalty, and to hold it for the use of the Parish, subject to the order of Vestry. It has long ago been settled that an action of debt can be maintained in such a case; ‡ and as, in many cases, the parishioner is liable to indictment also, there is no difficulty in recovering the amount.§ It has already been shown that the remedy of *distress* applies in every such case.||

* Before, Chap. III. Sec. 15.

† Page 23, and *note* *; pp. 48, 49, *note*, 510, 532, 586. And see pp. 515, 528.

‡ See Year-Books, 21 Hen. VII. fo. 20 (quoted before, *note*, p. 586); and Coke, 5 Reports, 63 (*b*). It is justly said, in the judgment in the latter case, that, “without a penalty, the ordinance [Bye-law] would be in vain.” This is the case on Ordinances and Bye-Laws, already quoted, pp. 47, 584.

§ See before, p. 218.

|| See before, pp. 48 *note*, 178. The case of *James v. Tutney*, Cro. Car. 497, 498, is an important one in illustration of this point, and others already sought to be explained in this work. It was, after very full argument, there adjudged, in clear accordance with sound principle, as already shown

It is highly proper that such penalties should be imposed. They ought to form a part of the well-understood system in every parish. This is equally, to use the words of Lord Coke, "for the profit of the whole kingdom, and for the benefit of the little commonwealths amongst themselves."* And the payment of the penalty ought to be always insisted on, whenever a default happens. It is by such means as these that all men will feel that equal justice is done to all; which should form the fundamental principle and unswerved-from rule, in every case in which any man is called upon either to pay his *scot* or to bear his *lot*.†

As the Law of England has always required every Parishioner to fulfil the duties which attach to him, as an individual member of a free community, who would grasp the benefits which a well-ordered political society affords; so it has been often shown, through the foregoing pages, that the Law has always held every Parish responsible, as an integral part of the State, for the fulfilment of certain duties to the State, the fulfilment of which is equally necessary to the maintenance of a well-ordered political society. This, indeed, has always formed the essential idea—the sole meaning, it may be said—of the Parish, as a separate and integral part, whether in matters of Watch and Ward, of Taxation, of Highways, or any other thing touching the common welfare. The maintenance of this practical responsibility, is, indeed, the only solid and lasting foundation on which any political State can be established, consistently with the maintenance of Free Institutions,

(pp. 464, 465 *note*), that a Bye-Law to *regulate* the use of a Common is good, but not one to *take away the inheritance*; and that a distress for the penalty under such Bye-Law is good. See also before, p. 585 and *note*.

The following are among the illustrations already given, in the foregoing pages, of penalties levied under Bye-Laws:—For not paying rate, 48 *note*; for refusing to serve office of churchwarden, 510, 532; on Churchwardens, for failing in duties, 511, 512; for refusing to pay poor-rate, 513; for encouraging small tenements for paupers, 515, 528; for giving occasion of ill-feeling between neighbours, 524; for overcharging the common, 526, 528; for wrongfully grazing cattle on the roadside, 526; for taking apprentice without consent, 527; for refusal to serve parish offices, 532.

Compare, also, 2 and 3 Philip and Mary, c. 8, and 18 Eliz. c. 10, s. 8; also 24 Hen. VIII. c. 10, and 8 Eliz. c. 15; etc. etc.; for illustrations of the identity always treated as existing between Parish fines and Leet amercements, both in their nature, and in the remedies for them.

* 'Complete Copyholder,' sec. 26.

† See before, p. 474.

and with the development of the moral, intellectual, social, or even industrial energies of men. True responsibility, and the consciousness of the power of healthy and unhampered self-action, can alone give the stimulus to right exertion.

It has been shown, by many illustrations, that, as the individual is amerced in penalties if he fail to bear his lot or pay his scot among his fellow parishioners, so the Parish is liable to be amerced if it fail in its duties to the State.* The principle of this penal responsibility is applicable to every case of obligation which the Law imposes, or which a Statesman-like policy would, at any time, impose, upon the Parish. The fulfilment of those obligations depends, indeed, on the adaptation of this principle, and its constant practical enforcement.†

In every case of the amercement of a parish, the consequence is, either that, as in the case of a Highway out of repair, the work damaged or left undone must be promptly done, under the alternative of a fine;‡ or, that a fine is immediately imposed. In the latter case, the proper course is, if there be no fund, applicable to general purposes, out of which the amount can be discharged, for the Parishioners to assess the amount among themselves, upon the same principle as already shown to be the right one in other cases of parish rates; and to entrust the collection to some named person, with power of distress on nonpayment.§ The Parish is *bound* to raise the amount of the fine; but the *ways and means* of doing this rest

* Several instances of this are given in the section on Watch and Ward. See p. 373, and the *note* to the same page, and p. 379, *note* †, for amercements on the Parish in cases of murder, or death uninquired of; pp. 518, 520, *notes*, in cases of arms or Butts not kept in order; p. 517 *note*, in cases of tumbrels, etc. not kept; 7 Hen. IV. c. 17 (and see 'Boke for a Justice,' p. 16 (*b*)), in case of Stocks not kept; 27 Hen. VIII. c. 25, s. 1, in case of beggars not kept to work. A vast number of other illustrations, "infinite in number and quality" (Coke's 'Complete Copyholder,' sec. 26), might be added. I content myself with referring to Sir Matthew Hale's allusion to this as a regular branch of revenue ('Analysis of the Law,' sec. 8), and to Madox's 'History of the Exchequer,' vol. i. chap. 14, where a great many instructive instances of amercements on Parishes are quoted. No amercement was more inevitable than that for not making pursuit and Hue and Cry; that is, for not fulfilling the duties of watch and ward. See Chap. III. Sec. 3.

† See before, pp. 46, 118, 119.

‡ See an example of such fine, 1 Madox, 557.

§ 'Doctor and Student,' Dial. ii. c. 9, quoted before, p. 178 *note*. "For amerciament there can be distress; and for a fine assessed, and a bye-law

with itself.* It will obviously be in all cases convenient, as a matter of economy, that the amount be levied, if it can be so arranged, at the same time with some other Parish Rate.

It was formerly the habit for the Parish to grant, every year, a rate to the Parish Constables, under the name, commonly, of "Town cess," to meet any extraordinary charges, either of the above nature, or for any purpose which the Parish, in Vestry assembled, chose to authorize. Examples of such a rate, and of the purposes to which it was applied, have already been given.† It is sufficient to say, that it is a Common Law rate, as regular and unquestionable as any rate can possibly be; and which it has become very desirable to restore again to habitual practice. It fell out of use, because it was more economical to raise all moneys needed under one rate; and the Poor-Rate became adopted for this purpose. The interference of a pedantic functionarism having taken away right Parish action in the control of the poor-rate, while funds for various Parish purposes are continually needed, it has become a clear measure of economy and prudence, as well as often of necessity, to resort again to this old Common Law General-rate, rather than raise a special rate for every small object. The churchwardens may be authorized to raise it, instead of the Constables, now that they have taken the place of the latter as Head of the Parish.‡

The Parish has always been responsible for raising its quota of the national Taxation. The *Inquisitiones Nonarum* have already been quoted, in practical illustration of this subject.§ But there is no need to refer to ancient precedent. The responsibility remains in full force at the present day, in regard to all the general State Taxes; a fact of which many people are unaware; and which, if it were better known, would probably induce a more active attention, by even selfish men, to the management of the affairs of their parishes.

Every Parish is directly and fully responsible for the due collection, and payment over to the State, of the Land Tax, the Assessed Taxes, and the Income Tax. And this responsibility the Commissioners for the gathering in of those taxes are

broken, there can be either action of debt, or distress."—Kitchin's Court Leet, etc., p. 43 a. See before, p. 607 note, and after, 613 note.

* See before, p. 563.

† Pp. 527, 528.

‡ See p. 581.

§ See, particularly, before, pp. 439–491.

bound to enforce. The responsibility is a Common Law one, though it is re-declared in the acts in force relating to all those Taxes.* And it is a responsibility which ought to be valued, as a recognition of the practical part which the Parish has, as an integer of the State, in controlling the proper conduct of matters of this nature; instead of weak and ignorant complaints being made, as they often are, when the weight of the responsibility is absolutely felt to fall on any Parish.

The responsibility would be an injustice if the Parish were helpless. But the Parish is not helpless. The Parish may itself both insist on security being taken from the Collector in the first instance, and on his regularly giving in, to be deposited in the Parish chest, a full account of all his receipts, arrears, and moneys paid over and remaining in hand. Thus, the Parish will either know that he has fulfilled his duties, or be able promptly to take measures to enforce his doing so. If the Parish lies tamely by, without doing either of these things, the blame of any default rests entirely with themselves. The State has, rightly, required the discharge of a duty at their hands, as to which they have been utterly heedless. They justly suffer the penalty.

* As to the Land Tax, see 38 Geo. III. c. 5, s. 18; 5 & 6 Wm. IV. c. 20, close of s. 19. As to Assessed Taxes, see 43 Geo. III. c. 99, ss. 43, 45, 70. In both cases, the Parish is not only made answerable for any loss, but for the costs of any action brought by or against any collector. See also *R. v. St. George's, Hanover Square*, 3 Anst. 920; *Ex parte Inhabitants of Wootton, Beds.*, 6 Price 103. The substance of the Law on all three may be stated, shortly, in the terms of 5 & 6 Vict. c. 35, s. 174 (Income Tax Act); which is as follows:—"The Parish or Place in which any assessment shall have been made, of the Duties granted by this Act, under any of the schedules marked respectively A, B, or D, shall be answerable for the *amount* of the Duties which shall have been so charged in such Parish or place; *and* for the said duties being *duly demanded* of the respective persons charged therewith, according to the regulations contained in the Acts relating to the Duties of Assessed taxes by the Collectors appointed for such Parish or place; *and also* for such collector *duly paying* the sums by him received, to the proper officers for receipt of the said Duties, according to such regulation."

The provisions of this section have since been, to some extent, modified by 17 & 18 Vict. c. 85, s. 5 (see also preamble and ss. 1 and 2). But this is without any propriety, and contrary to all principle: and is merely an encouragement to that criminal negligence of attention to local duties which characterizes our day. The complaints made of defaults, redound only to the discredit of those who make them; and prove that, having neglected to attend properly to their own affairs at the right time, they are justly punished. See above, and the extracts in the following note.

The proper course clearly is, that, in every case, the Vestry shall insist upon full security being taken, on each fresh appointment, and on that security being always kept up; and furthermore, that it shall require the regular delivery in of the above account, and the production of this in open Vestry. Examples have already been given of the due attention to what the safety of the Parish needs in this respect.*

Upon every branch of the subject, it will be plain to the

* Before, pp. 529, 530. The provisions of the Law relating to this matter seem so little generally known, or acted on, that it will be useful to quote them.

The following relate to the Assessed Taxes and the Income Tax (being included, by adoption, in the Acts as to the latter):—

“That if ANY TWO OR MORE OF THE INHABITANTS of the district or place for which a collector or collectors may be named as aforesaid, being respectively charged to any of the said duties to be assessed under the regulations of this Act, *or the churchwardens or overseers, or guardians of the poor of any description, or any two or more of them, or the select vestry or any seven or more of them*, where a select vestry shall be authorized to act for any parish or place, shall *require security to be taken* of the collector or collectors to be appointed for the parish or place on behalf of which such application shall be made, and shall *name a fit and proper person or persons to be a collector or collectors*, who respectively are willing to give such security, *it shall not be lawful for such commissioners to appoint collectors* for such duties, or any of them, until such security be given; and if the person or persons returned to the said commissioners, according to this Act, to be a collector or collectors, shall not have given, or shall not give such security, then it shall be lawful for such commissioners to appoint such persons, *and no others*, who shall have been named to them by the persons respectively before mentioned, as fit and proper persons to be collectors, and who will give such security as shall be required.”—43 Geo. III. c. 19, s. 14.

“That the collector or collectors appointed for any parish, ward, or place as aforesaid, *when required so to do* by the churchwardens and overseers, or guardians of the poor, or *any two of them*, or the select vestry as aforesaid, or any seven of them, shall deliver to them respectively *an account in writing* of the sums received by such collector or collectors, and of the sums in arrear, and of the sums remaining in his or their hands, and also of the sums paid to the receiver-general; and if any collector shall refuse or neglect so to do, within fourteen days after such demand shall be made, he shall forfeit and pay to the use of the poor of such parish or place where such collector shall reside, the sum of £20.”—43 Geo. III. c. 99, s. 42.

The Land Tax Acts (see 6 Geo. IV. c. 32, s. 5) improve the form of the last of these sections, in one respect, by directly declaring the power of the Vestry itself to name a person to demand the account. Practically, however, the matter is equally in the hands of the Vestry in other cases; as the Churchwardens are elected officers, and are bound (under penalty of being discharged from their office) to fulfil the expressed wish of the Vestry in this behalf.

thoughtful and really practical man, that the system of Penalties under Bye-Laws, and of Parish Amercements and Responsibility, is one which is wise in Policy, sound in Practice, and calculated, by how much the more strictly it is enforced, by so much the more efficiently to promote the public welfare, and to ensure the fulfilment of the common interests of all.*

* In one of the cases, already cited, on the liability of the Parish to make good deficiencies in the collection of the assessed taxes, language was used by the Court, so illustrative of the whole subject of this Section, that I quote it :—"If there is no power [in the Commissioners of Taxes] to re-assess, the parish must be answerable *in the common way*. Each individual is subject to the crown process, and must be reimbursed by a *general Parish rate*. *But that is a question for the different Parishioners to agitate between themselves.*" —3 Anstruther, 922.

This is an affirmation of the principle, already fully explained, of the power and duty of the Parish to make, by its own Act and Bye-Law, a Rate for *any necessary purpose* (see before, pp. 563, 609, 610) ; and also of its duty to consider and discuss these subjects. See before, p. 611.

CHAPTER IX.

THE CAUSES OF ANY EXISTING INEFFICIENCY IN PARISH ACTION ; AND THE MEANS OF SECURING CONSTANT FULL EFFICIENCY.

It has been fully shown in the preceding pages, that the whole spirit, and the fundamental characteristics and Principle, of English Institutions, have heretofore rested on the idea of *Responsibility*;—the mutual Responsibility between every man and his neighbourhood, and the Responsibility of every Parish to the State.*

* Since this work was written, a small volume has fallen into my hands, which I cannot too strongly commend to perusal : ‘The Original,’ by Thomas Walker, late one of the Police Magistrates of the Metropolis (Renshaw : Strand : 1850). It consists of the reprint of a series of essays by that gentleman. His remarks on the system of Parish Government, the result of long and very varied experience, are admirable, and entirely in accordance with the Principles stated and illustrated in this work. The following quotations are very appropriate in this place :—

“Parochial government is the very element upon which all other government in England depends ; and as long as it is out of order, everything must be out of order—representation—legislation—police. Hence, instead of a House of Commons of men of practical wisdom and distinct views in matters of government, saying little and doing much, a House of Commons as it is. The choosers and the chosen are alike vague in the knowledge of their duties. They have had no proper training ; they have not begun at the beginning—GOVERNMENT AT HOME. Hence also a confused mass of laws, and a flood of vice and crime. Hence demagogues, adventurers, theorists, and quacks, the tormentors of the public peace ; and mobs, and combinations, and visionary schemes.”—P. 21.

“Put the administration of justice throughout the land, the police, the poor-laws, the roads, into the hands of mere officials placed over extended districts, with which they are to have little or no community ;—take from men of business and of fortune everything but their business and their fortunes ;—and, on the one hand, will be created a race of traders in public affairs ; and, on the other, of selfish besotted individuals ; with a government relying for its strength on an all-pervading patronage :—and in the proportion that this is done, evil will arise, and good be prevented.”—P. 22.

“Parishes are little States, which ought to exhibit in finished miniature

It has been fully shown, that the complete means have been provided by our English Constitution, for ensuring that this Responsibility shall be felt as a constant reality, a living sense and impulse in all men.

It has been shown, by every form of illustration, that the Institution of the Parish has always practically furnished, and still practically furnishes, these means.

It has been shown, that so far from the Parish being an ecclesiastical Institution in any sense, or the minister having, as such, any authority in its secular affairs, the Parish is a Secular Institution, and that any dictative meddling by the minister in its secular affairs, and any assumed headship of the Parish in him, are absolutely illegal; while, even in ecclesiastical affairs, the Parish has full power of effectual control.*

It has been shown how this Responsibility has been meddled with, and practically destroyed, in a vast number of in-

the principle features of large ones. They should be preparatory schools for the art of government, full of rivalry in themselves, and with one another, in promoting the public welfare;—moral farms, divided, drained, and tilled, so as to produce the richest harvest and the fewest weeds.”—P. 45.

“Nothing but the organization of local governments upon such principles as will induce the best qualified there to begin their training, will ever produce a race of sound legislators and practical statesmen. It is not in the nature of things that either minister or legislator should learn their business in office or in parliament; they are beginning where they ought to end. They should enter upon their career in a smaller field, and in closer contact with mankind. The minister should know from his own gradual experience, or he will ever be vague in his views, as well as in trammels to interested and narrow-minded underlings; and the legislator should draw from nearer sources than the biassed and imperfect information to be obtained through COMMITTEES and COMMISSIONS; *in which information, as far as I have seen, there is at least as much of falsehood as of truth.*”—P. 168.

“It is by moral influence alone that liberty, as I have just defined it, can be secured, and it is only in self-governments that the proper moral influence exists. *In proportion as the supreme government takes upon itself the control of local affairs, apathy, feebleness, and corruption will creep in, and our increasing wealth, which should prove a blessing, will only hasten our ruin.*”—P. 259.

* It is a striking additional illustration of these constitutional Principles, that, even in one of those Statutes on Religious matters which distinguish the latter part of the Reign of Henry VIII. (31 Hen. VIII. c. 14, s. 8), after the enumeration of several articles that were to be believed in, and of several offences prohibited to ecclesiastical persons, and declared to be felonies, it is expressly enacted that the *Leets* should inquire touching even the heresies, felonies, contempts, and other offences connected with Religion, before-named in that Act.

stances, by modern empirical legislation. Men have been taught to rely on others, instead of on themselves. Functionarism has been set up, instead of self-reliance being maintained. Sound Institutions have been carefully encouraged to decay into inaction. Constitutional Principle has been unheeded—or rather, has been heeded only to be systematically violated. There has been a perpetual meddling with, and tinkering at, the Laws, under every shallow pretext, and to gratify any momentary whim of uninformed caprice, or of a false humanitarianism which, wholly unearnest, cannot exert itself to persuade men, but seeks, for the self-exaltation of its promoters, to impose a compulsory enforcement. Institutions having most important functions, live, in many respects, rather to illustrate how every energy can be palsied by Charlatanism, when this gets into the seat of the Legislator, than to sustain the national character and strength. In short, the results of modern legislation have been, chiefly, to fetter action, and to give, at every turn, to every caviller, the opportunity of hindrance and quibbling obstruction; and so to prevent works and efforts for the public good. There has, besides this, been cherished a superficial tone, which would sneer down Institutions that stand as a perpetual rebuke to Selfishness, and remain a memorial of a more true and earnest standard of the purpose and end of life.

These, and not any want of soundness or means of adaptation in the Institution itself, are the sole causes of any existing inefficiency in Parish action.

In the course of the illustrations that have been given in this Volume, the effectual remedy for existing wants and evils has been often alluded to, and been itself illustrated. It will be useful here to glance briefly again at some of the characters of that remedy.

The *first* condition is, to restore the constant sense of *Responsibility*, as a part of the habitual sense and motive of men; to make every man thoroughly feel, that he stands in immediate relations to his neighbourhood; which relations it is his first duty as a citizen, always to remember and respect and act up to.

The *second* condition is, to make it felt by every man, that the fruits of effort made, will be reaped by those who make it; that they will not be liable to be thwarted and interfered with by arbitrary functionaries, or by the procrustean dogmas of a

bureaucratic intermeddling; and that *certainly* shall again mark the Law itself, and confidence in right action not be made, as now, hopeless, by a perpetual meddling, shifting, and experimentalizing, under the abused name of Legislation.*

The *third* condition is, that the fullest and most convenient opportunities shall be open to every man, of getting a knowledge of the matters that concern him; and of discussing, in a business-like manner, those matters; and being thereby stimulated to thought and effort and action as to them.†

Each Parish must be always felt to be a complete *Unit* in itself; of some one of which, each man forms a part. Men must realize the universally-proved truth, that no people, nor any neighbourhood, nor any set of men, nor any man, was ever yet made good, moral, clean, or safe, by Act of Parliament, or by the appointment of salaried functionaries; but that the only hope and assuredness lie, in every man feeling, and acting up to, the obligations of the relation in which he stands to the neighbourhood where he inhabits.

When the sense of the duties and responsibilities of neighbourhood is once restored, the demoralization of masses of men, and the apathy to the discharge of their public duties by all, which so conspicuously mark our time, will be at an end. Every one will feel that he has an immediate interest in the

* As to the essential need of *Certainty*, see before, p. 212, and the references there given in *note* ‡.

† It is a great defect in Hobhouse's Act (see before, p. 240, etc.) that it contemplates undivided elections in Parishes; instead of that true Representation which exists only where certain of the elected are well known to certain parts, and in constant communication with them. Unwieldy public meetings are not true means of public opinion. This I have pointed out elsewhere ('Local Self-Government,' pp. 80, 184, 215-217); and see before, pp. 34, 35 *note*; and what is said in this Volume on open meetings,—as at pp. 51, 88 (*note*), 135, 170, 241, 486, etc.,—must always be taken subject to this. Vestry Meetings used to be more regularly and frequently held than now. New Poor Law Acts, etc. have led to this injurious change.

See further on this subject, the Introduction to my edition of the Metropolis Local Management Act, 1855, pp. 13, 14. The suggestions there made, apply particularly to town populations. But the power in Parishes of adopting subdivisions of themselves, has been often alluded to and illustrated in these pages. Such subdivision, of course, becomes the more necessary as population increases. But the Principle applies everywhere. When villages grow up at distant ends of a large Parish, the subdivision is as essential to practical good management as in a crowded town. And see before, p. 262 *note*, Sec. 6.

sound state, morally and physically, of all his neighbours. He will feel himself to be part of a unit responsible for the acts of every man in it. He will see that he must use every means, in enlightened self-protection, to keep the social and moral condition of his neighbours sound and healthy.*

It must be felt that the STATE is made up of these Units; and that its duty lies in maintaining that relation with constancy, consistency, and firmness.†

It may be well enough for the selfish and the idle to cry loudly for compulsory measures towards this or that nostrum; and to call for "Boards," "Inspectors," "Public Prosecutors," and other crown-appointed functionaries, to make a pretence of doing what can only really be ever done by honest and independent men being themselves astir to help in doing it. Every man of the least practical experience, knows that every part of this functionary method is but a mere disguise; by which,—while a beautiful appearance of system is got on paper, and paraded in dressed-up official Reports,‡—real action and permanent improvement are only made more distant than ever. It is self-evident that, the more "Inspectors" are sent about, and the more men are taught to look to such agency, in any shape, the more are independent effort and action, and the sense of self-reliance, habitually discouraged, even as to those matters—by far the most continual and really important—which cannot by possibility be effected by other than individual volition. Arbitrary and irresponsible action never yet advanced any good cause.§ If men submit to be debased by it for a

* See the whole of Sec. 15, Chap. III.

† See before, p. 46.

‡ See before, pp. 401 note, 412–414 note.

§ It is painful to see how the ignorance of our Institutions that prevails, and the growth of the functionary system, operate, in perverting even the commonest course of honest and regular proceeding. An example may be given from the Burial Acts of 1852 and 1853. Of course, those Acts were never intended to give arbitrary and capricious powers to any Secretary of State. If he "recommends" any course, it can only lawfully be after full legal constitutional inquiry. Of this there are two modes: either by the writ *ad quod damnum* (see before, p. 354), or by a writ of *inquiry*, of which an example will presently be given. And this "recommendation" must, by the terms of the Acts themselves, be made upon some positive suggestion that the Public Health is endangered. And evidence of this must be openly given and sifted. It is obviously preposterous, as well as illegal and unconstitutional in the highest degree,—in the teeth of the plainest rules of honesty and justice, and of Magna Charta itself,—that the Secretary of State

time, it only nourishes an avalanche of angry wrath, to be presently, and perhaps indiscriminately, hurled forth.

The mischiefs of the existing Local Act system are plain; and the remedy for this is also plain enough.* Let that remedy be adopted: what is now done ill and unsatisfactorily, but to the great burden of Parliament and mischief to the public, will then be well and satisfactorily done; while Parliament will itself be relieved from the extraordinary anomaly of its present position; from a mass of wearying labour that at present overweighs it, and is itself ill done, while hindering the well doing of what is, constitutionally, its proper and peculiar function.

What general measures are needed, are very simple. They have already been touched on to a considerable extent; both indirectly, in showing duties of Government neglected,† and directly, in showing what a practical measure might be.‡

shall attempt to "recommend" on his own *ipse dixit*, or on the Report of any person sent down, *ex parte*, by him. (See before, p. 450, note *.) Yet this has been habitually done, and submitted to, since the passing of the New Burial Acts! The practice is clearly illegal. But this is an illustration of what the bureaucratic system has a necessary and constantly growing tendency to bring about.

* See my 'Government by Commissions,' pp. 371-373. The ground of the appeal to Parliament in such cases is, simply, that it is the business of Parliament to see that the Common Right and General Liberty are not infringed by any Local Arrangements. Parliament can never properly discuss and settle matters which involve a minute knowledge of Local Arrangements. The true remedy lies, in requiring that every Local measure shall, on its proposition, be first thoroughly published in the place to which it refers: and after having been thus published for a certain time, shall be discussed, on the spot, by a Body expressly chosen by the inhabitants for the purpose, with full opportunity for any objections to be heard and enforced:—after passing through which ordeal only, shall Parliament permit the measure to be brought up for its sanction; which sanction shall have reference, not to local details, but to any points of Common Right and General Liberty which may seem to be touched. By such a plan, the enormous present waste of time to Parliament, in Committees on Local Bills, would be saved; the greater part of the cost of such Bills would be also saved; and real opportunities of self-protection would be secured to every legitimate objector.

The preposterous proposition put forth by the Board of Health in 1855, in reference to Local Acts, was merely an attempt to exalt its own power, at the expense of the interests of the whole country, and of the dignity and independence of Parliament.

† Before, pp. 216, 404, etc.

‡ Before, pp. 260-262 note. To prevent misapprehension, I call special attention to what will always be needed,—careful provision for equitable

But the meddling, shifting, experimental legislation which is the characteristic of our day ; which is done in utter ignorance, by its perpetrators, of what they are dealing with,*—and in utter ignorance by the public, of how their interests and institutions are being tampered with ; all this must be stopped. It must be remembered always, that the existing practical system of our Institutions is, as has been shown in this Volume, very definite and clear, and *adaptable* to all conditions ; and that there is no need of Acts of Parliament to enable the doing of any fresh thing that needs doing, but only to remove obstructions that have been unlawfully set up to the right action of those Institutions.

It is by the *adaptation* of the sound practical principles that have been shown to be embodied in the Common Law, as applied to these institutions, that the sound end can alone be reached. Restore the course of systematic and thorough Inquiry into the way in which every place has fulfilled its duties ; and enforce the responsibility of every place for the non-fulfilment of these ;—and the results will be at once attained, of making men feel a constant sense of their individual responsibilities, and of stimulating every effort to the fulfilment of those responsibilities.

There is all the difference in the world, between a meddling interference that would dictate *what* is to be done about everything, and *how* everything is to be done ; and the action of a system which continually and unevadibly requires that certain broad results shall be accomplished,—and so necessarily calls upon every man and neighbourhood to bestir themselves to accomplish these by the best means in their power. The *obligation to act* is what the true Statesman will seek to make unevadible. He will never seek to fetter enterprise and skill and effort, by attempting to dictate and define details and methods. That is the course followed only by the Charlatan. Too many examples of this are now on the Statute-Book. In any fresh legislation, all this needs to be reversed. The man of honest ambition will always find something to suggest and help forward, in however narrow a sphere his action is. Scope is needed for such honourable impulses, not a mischievous pro-

arrangements between adjoining Parishes, where it is necessary for works to intercommunicate.

* See before, p. 553 ; and p. 388, for Lord Coke's remarks hereon.

crusteanism and meddling interference that necessarily chill every effort. The business of the State is with general *Results*, as affecting the general welfare,—not with the speciality of *Methods*. The latter must vary infinitely, as circumstances vary. A wise policy will encourage the trial of every shape of method and free enterprise. The only things the State should insist upon, are,—Self-Action, applied under the full consciousness of an unevadible Responsibility for the results brought out, but never tied down or limited either in direction or method.

There is no need to rush to new devices as to this matter. The practical course is, to restore the vital activity of that which has heretofore existed, and which still exists by Law. The thorough and systematic course of *Inquiry*, heretofore regular and habitual, into the discharge of all Local duties, must be reorganized; and it must form, as of old, a fulfilled,—not, as now, a neglected—part of the regular functions and duties of the executive, to see that this is carried out.* The Inquiries must be true and constitutional; and not, as the so-called inquiries of our day are, merely functionary, and a cloak to hide the truth. Beyond this, Prosecution for amercement must inevitably—and not at any caprice—follow every unsatisfied Inquiry.†

* See before, p. 216.

† See the last Section of the preceding Chapter. Besides the regular and periodical Inquiries already named, and which include everything relating to Highways, Drainage, Public Health, Watch and Ward, Criminal Justice, Prisons, etc. (See pp. 35, 36, 367, etc.), the Crown has the constitutional power to institute Inquiries, by the same methods, on any occasions that may arise to need it. Domesday-Book, the Hundred-Rolls, the *Inquisitiones Nonarum*, are but examples of such special Inquiries. If to the system of such inquiries, all open and public,—not made by a functionary, but by a jury before some officer like the Coroner,—were added inevitable prosecution on default found, the result on Local Action is self-evident: the impossibility of Local inaction demonstrates itself. But the necessity for prosecution would soon become rare, when the unavoidable Public Inquiry came thus regularly and continually round.

The following is the form of the writ lawfully to be issued by the Crown on any occasion of *special Inquiry*. It is addressed to the person,—whether Coroner, or any one specially appointed,—before whom the Inquiry is to be made by a jury. The Articles of Inquiry,—that is, the matters to be inquired into,—accompany the writ, in such a scheduled form as seen on p. 367.

“Victoria, etc. to A. B. etc. greeting. Know that we have assigned you to inquire, by the oaths of honest and lawful men of the County of ———, concerning certain matters of common right and public well-being and other

It will thus be plainly seen,—what, indeed, every page of the present Volume has but illustrated,—that the Parish, as an Institution, does not, as the slothful and selfish would sneeringly represent, and as the urgers-on of functionarism always pretend, embody the idea or fact of inertness and supineness. On the contrary, the active sense of an ever-felt Responsibility forms its *fundamental principle*. This is its essence, life, and spirit. Without this, it is a name only,—a mere shadow: to which, indeed, it may be sought to reduce it, the better to cover the sinister aims of selfish functionarism; but its whole substance and reality are then gone.

To secure this active sense of ever-felt responsibility, by the means thus pointed out, is a work simple in itself, and sanctioned by the whole history of our constitutional Practice.

Whoever is honest and in earnest in his professions of desire for an improvement in the moral, social, and physical, as well as the intellectual, or even the industrial, condition of his fellow-countrymen; whoever would forward true measures for the public well-being and improvement, for the true administration of justice and prevention of wrong-doing, for the safety and security of person and property, for the well-ordering of poor-relief, education, the public health; whoever would promote the growth of a true and hearty sympathy between class and class, a right appreciation of the mutual obligations and relations of each, and a cheerful and happy fulfilment of what those obligations and relations bring to each; will see his only sure means to lie, in helping to sustain and to develope, by such means as have been glanced at, the life and sound action of the English Institution of THE PARISH.

things touching us and our State and also the said County; and moreover touching the acts and deeds of certain Parish Officers in the said County; as in the Articles which are herewith delivered to you more fully appears. And we command you that, at certain days and places which you shall appoint for that purpose, you shall hold these inquiries, according to the contents of the aforesaid Articles. And these, clearly and plainly set forth under your seal and the seals of them by whom the inquiry is made, you shall return to us without delay, together with this Writ. And we have commanded our Sheriff of the aforesaid County that, at the days and place which you shall make known to him, he shall cause to come before you so many honest and lawful men of his bailiwick, by whom the truth of the matter in the premises shall be the better known and inquired. Witness, etc."

APPENDIX.

A.

THE UNLAWFULNESS OF THE CONSECRATION OF NEW BURIAL-GROUNDS.

The circumstances mentioned in note † p. 444, make it proper to consider, somewhat more fully, the point of "Consecration" of burial-grounds. This has become a matter of great practical importance, and it is daily becoming more so, in a vast number of parishes in England, in consequence of the wide application of the Burial Acts of 1852, 1853, particularly named in the Chapter on Parish Committees, and in Section 8, Chapter VII., on "Burial."

The principal *pretext* for the obstructions thrown in the way of rendering such assistance as it has been imagined that Bishops could give, towards bringing the new Burial-Grounds into use, has been, that the fancies of certain Bishops have not been gratified as to the mode of marking out the parts of burial-grounds that are to be consecrated. The 85th Canon is pretended to be relied on;—which says that "churchyards shall be well and sufficiently repaired, fenced, and maintained with Walls, Rails, or Pales." The Canon is, however, plainly perverted; the only object of "fencing" being, "to keep out hogs and other noxious animals" (Ayliffe's 'Parergon,' p. 173). But it is unnecessary to fall back on the construction of its terms. It might be sufficient to say, that this Canon is simply and absolutely void, inasmuch as no Canon can impose any charge on the people. "The Convocation cannot, by their canons, take money out of people's pockets" (Lord Chief Justice Holt, 12 Modern Rep. 172; and see before, p. 33), while no Canon can, in any way, bind the Laity. But it is more to the point to go direct to the question of "Consecration" itself; which will be found to be wholly illegal, and a mere popish superstition, unallowed by the Church of England; and the taking any fees for which is a mere act of extortion, and involves the guilt of *Simony*.

The Consecration of Churches, churchyards, and burial-grounds, is neither required nor allowed by Law, nor by the Protestant Church of England. The tests in every such case are, the Statutes of Edward VI. and Elizabeth. The Statutes 2 & 3 Ed. VI. c. 1; 3 & 4 Ed. VI. c. 10; 5 & 6 Ed. VI. c. 1; 1 Eliz. c. 2; 8 Eliz. c. 1; declare "the Book of Common Prayer and administration of the sacraments and other rites and ceremonies of the Church after the use of the Church of England," to be the only authority that it shall be lawful to follow; every other form of service of the church being

thereby "clearly and utterly abolished, extinguished, and forbidden." The Act of 14 Car. II. c. 4 re-enforces the same thing. So unquestionably was this always recognized to be the Law, and that *no rite or ceremony would be lawful that was not contained in the Book of Common Prayer*, that it was necessary to pass special enactments in order to legalize even the services for the consecration of Archbishops, Bishops, Priests, Deacons, and Ministers of the Church. These enactments are 3 & 4 Ed. VI. c. 12; and parts of 5 & 6 Ed. VI. c. 1; 8 Eliz. c. 1; and 14 Car. II. c. 4. The first of these empowered the drawing-up of a form for such consecration; the last three declared this form lawful, and that it is to be of "like force, authority, and value," as the Book of Common Prayer. See also the 36th Article of the Church of England (as now in force). But no ceremony nor service for the consecration of churchyards or burial-grounds, is contained in the lawful Book of Common Prayer; or alluded to in either of the different sets of the "Articles of Religion;" or even in the Canons of 1603; or authorized by any Act: while there is, in *each* of the different sets of the "Articles of Religion,"¹ an "Article" against Purgatory, as a "fond thing, vainly feigned." But this doctrine of Purgatory was the foundation on which alone the superstition as to the consecration of burial-grounds was built up.

It is clear, therefore, that the consecration of burial-grounds is one of those "superstitions" and "superstitious services" (see 3 & 4 Ed. VI. c. 10) which it was the object of the Reformation to purify the Church of England from. If anything were wanting to complete this point, it is found in the fact that one of the main grounds of Archbishop Laud's impeachment, was his introduction of "divers popish and superstitious ceremonies, without warrant of Law" (article 7 of his Impeachment); and that, in the evidence given in proof of this charge, his attempt to re-introduce the consecration of churches and churchyards formed a prominent part. His attempted defence on this matter was singularly weak and self-contradictory, not even pretending to find any "warrant of Law;" and it was replied to specifically, and with remarkable conclusiveness. See Rushworth's Hist. Coll. vol. ii. pp. 76-79, and the 'Trial of Laud' (Canterburie's Doome), pp. 112-128, 497-506.

In 1661, and again in 1712, Convocation pretended to set up a form for consecration of churches and churchyards; but each attempt was, in every respect, illegal. Neither of them was authorized by Parliament, as even the consecration of Bishops, etc., was obliged to be, and as, alone, these could have legally been: neither of them has ever been authorized to be added to the Rites and Ceremonies of the Church of England. The putting forth or using either, is, therefore, a *direct violation of the Law of England*.

It adds much to the marked character of the illegality of these attempts, that, though the first of them was made in the Convocation of 1661, neither of the Acts, 13 Car. II. (Stat. 1.) c. 12, or 14 Car. II. c. 4, which were passed respectively in 1661 and 1662, recognized or legalized the attempt; but, on the contrary, the former in express terms declares, that no ecclesiastical Law or Canon is lawful which had not been previously confirmed by Parliament; and the latter declares, that the Book of Common Prayer, and the rites and ceremonies there, together with a named form and manner of consecrating Bishops, Priests and Deans, are alone lawful. (See sections 1 and 12. See also Canons VI., VIII., XII., and XIV.)

¹ The Articles of 1552 differ considerably from those of 1562.

The form put forth by Convocation in 1712 is equally illegal. Though Gibson (Codex, p. 1459) and Burn (Eccles. Law, vol. i. p. 326) both give a copy of it, neither of them ventures even to suggest the least intimation of there being any authority for it, or to assert the lawfulness of its use. Both well knew that it is wholly unlawful. Burn acknowledges that it never received the royal assent (p. 327: see before pp. 72, 73). Even that, however, without the authority of Parliament also, would not make it lawful.

The whole affair is, in short, but a striking additional example of modern ecclesiastical usurpation. It is an attempt, by means of superstitious usages, condemned by the "Articles" of the Church itself, to extort fees; the taking of which fees is in itself an act of *Simony*, however, even were "consecration" lawful. This part of the matter is also entirely modern; inasmuch that Bishop Gibson himself declares, that nothing is lawful to be paid on the consecration of a church, beyond a small amount for "refreshments for the bishop and his servants" (under the name of *procuracion*); as to which he intimates, by an example given, that the sum of £3. 6s. 8d. is sufficient.

The whole attempt ought to be resisted by every one who respects the Protestant spirit of the Church, or the efforts, struggles, and teachings of the Fathers of the Reformation. Were the spirit that animated those truly illustrious men better known and appreciated—to which I trust that the present Volume may somewhat contribute—there would be less of Dissent in England; less of religious warfare; and more of simple Christianity.

It has already been shown that many Churches and Cathedrals in England [*"multas ecclesias et aliquas cathedrales"* :—Constitution of Otho, p. 6] have never been consecrated; yet the Canon Law itself recognizes the services and sacraments therein. Gibson himself alludes to the well-known fact that, "not only divine service may be performed, but also sacraments administered, in Churches and Chapels *not consecrated*" (Codex, p. 190). This being so as to Churches, much more is it so as to Burial-grounds.

The New Burials Acts of 1852, 1853, do not affect the matter. Though, with the loose phraseology, and clearly through that carelessness and misapprehension of the law, which characterize modern legislation, they say that a *part* "may" be consecrated, no form of consecration is sanctioned, without which the ceremony is unlawful; and the same Acts very explicitly require that the *whole* shall *not*, under any circumstances, be consecrated. 15 & 16 Vict. c. 85, ss. 30 and 32; 16 & 17 Vict. c. 134, s. 7.

The true aspect of this subject cannot be better summed up than in the words of Ayliffe, whom no one will suspect of other than a cordial regard for the true functions and rights of the church and the clergy :—
 "Having persuaded the people into a foolish opinion, that the souls of the departed hovered about their bodies after death; [that] they could not be laid at rest without the help of the priest; and that this could not be obtained unless they were buried in holy ground, whereon the priest exercised his office: thus they made the churchyard a place necessary unto rest after death, and made an immense profit to themselves thereby. Besides, as churchyards were separated and divided by consecration from other profane and impure places, so the Bishops who consecrated this ground were wont to have a *Spill or Sportule* [of Fees] for the same, from the credulous Laity;" "so that nothing is to be done without money, even in consecration itself; though this be *SIMONY* also by the Canon Law." (Parergon, pp. 172, 173, 194, 195.) Compare before, p. 445 note; 452 note *; also, p. 446 note ‡.

APPENDIX B.

Extract from Vestry Minutes of Steeple Ashton, Wilts, illustrating the Administration of Poor Relief during the first twenty-five years after 43 Elizabeth, and the System of a Parochial "Friendly Society" for Loans on Security.

(SEE BEFORE, CHAPTER VII. SECTION 6, P. 433.)

A Register of such Vestries or Churchreckonings about y^e stock and maintenance for y^e poore which have bene made since y^e beginning of the raigne of our soveraigne Lord King James, of England, Scotland, Fraunce & Ireland King, defender of y^e faith, &c.

Anno Domini 1603 Jacobi 1^o vppon y^e Feast of St Steven was made this account.

Received of	Walter Marks for y ^e vse of	10£	20s
	George White for y ^e vse of	4£	8s
	William Hancock for y ^e vse of	5£	10s
	Georg Shord for y ^e vse of	40s	4s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s

The which monie received,—in part, for this present yeare, was laid vp for y^e encrease of y^e poores stock,—and part was deliuered to y^e poore that had most need, by y^e hands of John Rogers, Vicar.

Anno Domini 1604 Jacobi 2^o vppon y^e feast of St Steven was made vp this account.

Received out of y ^e poores stock of	John Grenhil for two yeares vse of	3£	12s
	Walter Marks sen ^r for y ^e vse of	30s	
	Walter Marks jun ^r for y ^e vse of	10£	20s
	William Hancock for y ^e vse of	5£	10s
	Georg White for y ^e vse of	4£	8s
	Georg Shord for y ^e vse of	40s	4s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s

The which monie receiued, likewise in part was laid vp to the encrease of the stock, and part divided to y^e poore at the discretion of John Rogers, Vicar.

Remaining of y ^e poores stock in y ^e hands of	John Grenhil	4£
	Walter Marks sen ^r	30s
	Walter Marks jun ^r	10£
	Georg White	4£
	William Hancock	5£
	Georg Shord	40s
	Thomas Langfeild	40s
	Thomas Symmes	40s

Anno Domini 1605, Jacobi 3^o, vpon y^e feast of
St Steven was made this account.

Received of the poores stock out of y ^e hands of	John Grenhil for y ^e vse of	4£	8s
	Walter Marks sen. for y ^e vse of	30s	
	Walter Marks jun. for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	William Hancock for y ^e vse of	5£	10s
	Georg Shord for y ^e vse of	40s	
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s

The which monie, being received, was delivered into y^e hands
of George Webbe, Vicar, and Roger Martin; and by them was
laid out vppon linnen cloth for y^e poore—45s. The other 20s
was delivered to y^e use of y^e poore vnto y^e Collectors* of that
yeare for y^e poore. The linnen cloth bought with y^e aforesaid
45s was distributed in manner following.

Inprimis	Georg Shords wife had of canvas	2 els and a qu ^{tr}
Item	Christopher Griffins wife had of canvas	2 els and a qu ^{tr}
Item	James Gambles daughter had of canvas	1 el & a qu ^{tr}
Item	Widdow Griffin had of canvas	2 els & a quarter
Item	Pargeters boy had of canvas	1 el & a quarter
Item	Margerie Aiers had of canvas	2 elles & a quarter
Item	Crows wife had of canvas	1 elle & an half
Item	Andrei Frauncis had of canvas	2 elles & a quarter
Item	Robert Maids wife had of canvas	2 elles & a quarter
Item	Roger Winsloes child had of canvas	1 elle & an half
Item	Thomas Reads child had of canvas	1 elle & a quarter
Item	Widdow Bruer had of canvas	2 elles & a quarter
Item	John Bruers wife had of canvas	2 elles & a quarter
Item	William Tillin had of canvas	2 elles & a quarter
Item	Browns wife had of canvas	2 elles & a quarter

Anno Domini 1606 Jacobi 4^{to} uppon y^e feast of
St Steven was made this account.

Received of y ^e poores stock out of y ^e hands of	John Grenhil for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	John Marks for y ^e vse of	30s	
	George White for y ^e vse of	4£	
	William Hancock for y ^e vse of	5£	10s
	Georg Shord for y ^e vse of	40s	
	Thos. Langfeild for y ^e vse of	40s	4s
	Thos. Symmes for y ^e vse of	40s	4s

Out of y^e which monie, being received, was,—with y^e
whole consent of y^e vestrie,—delivered to y^e Overseers for
y^e poore 20s

Item	Ric ^d Whitlock for two years harbouring of Widdow Godwin	13s 4d
Item	to Widdow Bruer	2s 6d
Item	to Widdow Griffin	2s 6d
Item	to Thomas Nash	2s
Item	to Widdow Shepperd	1s
Item	to Widdow Crow	1s
Item	to Margerie Aiers	1s 4d
Item	to William Tillin	1s 4d

* It will be seen that the old name "Collectors" was still kept up, though the 43rd
Eliz. had passed three years before. See before, p. 149 note, and after, p. 640.

Anno Domini 1607 Jacobi 5^{to} vppon y^e feast of St Steven was made this receipt. George Webbe, Vicar.

Received of the poores stock out of y ^e hands of	John Grenhil for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	John Marks for y ^e vse of	30s	
	Georg White for y ^e vse of	4£	
	William Hancock for y ^e vse of	5£	10s
	Georg Shord for y ^e vse of	40s	
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s

At this vestrie John Euance, who, together with John Marks, was in band for Georg Shord, brought in 20s, the one half of y^e monie ; soe y^t, by y^e generall consent of y^e whole vestrie, hee was released from his band. But yeat, John Marks, not hauing brought in his part, continueth still in band for Georg Shord.

Also, shortly after, John Marks brought in his 30s wch hee had hired out of y^e poores stock, which remaineth yeat [yet] to be let.

The monie received was distributed by mee George Webbe, Vicar (by y^e consent of y^e vestrie) in manner and form following.

To y ^e overseers for y ^e pcor, by y ^e generall consent of y ^e vestrie, was delivered out of this	20s
Item to John Euance when hee delivered in his 20s, was, by consent, redelivered, in regard of his povertie . . .	4s
Item to Richard Whitlock for y ^e harboring of Widdow Godwin	8s
Item to Thos. Nash, by y ^e consent of y ^e whole vestrie . . .	2s 6d
Item to Richard Weastwood toward y ^e payment of his rent . . .	5s
Item to y ^e same Ric ^d Weastwood at other severall tymes . . .	2s
Item to Widdow Bruer at four severall tymes	7s 8d
Item for a shrowd for y ^e same widdow Bruer	2s 4d
Item to William Tillin at four several tymes	2s
Item to Widdow Griffin at five several tymes	5s
Item for a paire of shoes for Margarie Aiers	1s 4d
Item to y ^e widdow Harding at five severall tymes	4s 6d
Item to James Gambles Wife	6d
Item to y ^e same wife of James Gamble at another time . . .	1s
Item to y ^e Widdow Sheapperd at two several tymes	10d

Soe y^t by this reckoning y^e whole summe received for y^e use of y^e poores stock was laid out ; and also 20s of y^e stock,—which was agreed upon by y^e whole vestrie held Anno sequenti.

Remaining in y ^e hands of	John Grenhil	4£
	Walter Marks	10£
	Georg White	4£
	William Hancock	5£
	George Shord	20s
	Thomas Langfeild	40s
	Thomas Symmes	40s

Anno Domini 1608 Jacobi 6^{to} vppon y^e feast of St Steven
was made this receit, George Webbe being Vicar.

Received of y ^e poores stock out of y ^e hands of	John Grenhill for y ^e use of	4£	8s
	Walter Marks for y ^e use of	10£	20s
	George White for y ^e vse of	4£	8s
	William Hancock for y ^e use of	5£	10s
	Georg Shord for y ^e use of	20s	
	Thomas Langfeild for y ^e use of	40s	4s
	Thomas Symmes for y ^e use of	40s	4s

At this vestrie John Marks tooke y^e 20s, for which hee
was in band in y^e behalf of Georg Shord, vppon himself,
to return in y^e principall at y^e next vestry.

At this vestrye likewise it was agreed y^t (by reason of y^e
present great dearth) both y^e former 20s distributed y^e yeare
before out of y^e stock, as also y^e 30s w^{ch} John Marks brought
in y^e last yeare of y^e stock, should be alienated from y^e
stock and be distributed.

Soe y^t there remained in y^e hands of mee George Webbe
(besides that w^{ch} remaineth yeat to be brought in, which
amounteth to the summe of 38s) besides y^e interest of
Shords monie 3£ 3s

Concerning y^e which it was aggreed that y^e parties un-
dernamed should have weekly portions as followeth (so long
as the monie would last,) everie Sunday.

Widdow Godwin	3d
Agnes Harding	3d
William Winsloe	3d
Thomas Nash	2d
Roger Maiol	2d
Widdow Crow	2d
Elinor Crockson	2d
Widdow Sheppeard	2d
Thomas Read	3d
Richard Weastwood	6d
Roger Winsloe	1d
Agnes Shord	3d
George Drinckwater	3d
James Gamble	3d
John Pargeter	2d
Widdow Griffin	3d
William Tillin	4d
Christopher Griffin	3d
John Young	3d
Andrie Frauncis	4d
John Bruer	3d
Marie Brown	2d
Marie Maiol	2d

Anno Domini 1609 Jacobo 7^{mo} uppon the feast of St Steven
was made this receit, there being present George Webbe,
Vicar, John Grenhil, Roger Marks, Roger Martin, and
others.

Received of y ^e poores stock out of y ^e hands of	John Grenhil for y ^e use of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George White for y ^e vse of	4£	8s
	William Hancock for y ^e use of	5£	10s
	John Marks for y ^e use of	20s	2s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s

Remaining still of y ^e poores stock in y ^e hands of	John Grenhil	4£
	Walter Marks	10£
	Georg White	4£
	William Hancock	5£
	John Marks	20s
	Thomas Langfeild	40s
	Thomas Symmes	40s
	John Jordan	40s

At this vestrie it was agreed, by generall consent, that for as much as y^e former yeare there was monie abstracted from y^e stock by reason of y^e dearth and scarcity of y^e tyme, now there should (out of y^e forereceived interest) 40s to be added again to y^e stock. And see y^e whole stock amounteth to y^e summe of 30£

Item, There was paid to Richard Whitlock for Widdow Godwin's rent	8s
Item, There was paid to Thomas Silverthorne for y ^e rent of Andrie Frauncis	8s

Anno Domini 1610 Jacobi 8^o vppon y^e feast of St Steuen was made this receit in y^e presence of George Webbe, Vicar, John Grenhil, Roger Martin, Walter Marks, &c.

Received of	John Grenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George White for y ^e vse of	4£	8s
	William Hancock for y ^e vse of	5£	
	John Marks for y ^e vse	20s	2s
	Thomas Marks for y ^e vse of	40s	4s
	Thomas Langfeild for y ^e vse of	40s	4s
	John Jordan for y ^e vse of	40s	4s
Remaining in y ^e hands of	John Grenhill	4£	
	Walter Marks	10£	
	George White	4£	
	William Hancock	5£	
	John Marks	20s	
	Thomas Langfeild	40s	
	Thomas Symmes	40s	
	John Jordan	40s	

The sums of y^e receipts at this Audit (there remaining behind ten shillings to be paid by William Hancock) came to fifty shillings; whereof, by general consent, was disbursed:—

Imprimis for widdow Godwins rent	9s
Item for Andrie Frauncis for her rent	8s
Item to Widdow Sheppard a pair of shoes	2s 4d
Item to Widdow Griffin for a pair of shoes	2s 4d
Item to Andrie Frauncis for herself and her sonne being sicke	3s 4d
Item to old Till at two severall tymes	2s
Item to Widdow Crockson two shillings	2s
Item to twelve of y ^e poore, canvas	21s
William Hancock is behind for his reckoning	10s
George White for two years	16s

Anno Domini 1611 Jacobi 9^o vppon the feast of St. Steven,
was made this receipt in y^e presence of George Webbe,
Vicar, John Grenhil, Roger Marks, Roger Martins, and
others.

Received of	John Grenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George White for y ^e vse of	4£	8s
	William Hancock for y ^e vse of	5£	*8s
	John Marks for y ^e vse of	20s	2s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	John Jordan for y ^e vse of	40s	4s
Remaining in y ^e hands of	John Grenhil	4£	
	Walter Marks	10£	
	George White	4£	
	William Hancock	5£	
	John Marks	20s	
	Thomas Langfeild	40s	
	Thomas Symmes	40s	
	John Jordan	40s	

Behind yeat in their payment, George White for two yeares
vse of four pounds 16s
William Hancock, for this year and the former 20s
The summe of the receipts (there remaining behind as is
before specified) came to 50s

Whereof disbursed :—

Inprimis for Widdow Godwins rent	10s	
Item for Andrie Frauncis rent	8s	
Item to Christopher Griffin to buy him apparel, delivered into y ^e hands of Robert Hancock	7s	
There remained further to be employed	25s	
To which, by the bringing in of George Whites 16s, and 11s 3d of William Hancocks, was added	27s 3d	52s 3d

Whereof was further disbursed :—

Inprimis to William Tod for discharging y ^e parish of one of James Gambles children	20s	
Item for a shrowd for Christopher Griffin	2s	4d
Item to John Till at three severall tymes	3s	
Item to Widdow Griffin	3s	
Item to Widdow Godwin	1s	
Item to Pargeter	1s	6d

With y^e residue, w^{ch} came to 21s 1d, was bought twenty
yards of canvas at 13d pence y^e yard, which was dis-
tributed thus :—

Inprimis George Shords wife	2 yards
Widdow Whatly of y ^e lane	2 yards
Margarie Aiers	2 yards
Widdow Sheppeard	2 yards
Widdow Crookson	2 yards
Widdow Godwin	2 yards
Widdow Gamble	3 yards
Andrie Frauncis	1 yard & half
Widdow Griffin	1 yard & half
Widdow Harding	2 yards

* Clearly a later entry, when paid. The sums, without this, make 50s., as below.

Anno Domini 1612 Jacobi 10 vppon y^e feast of St Steuen
was made this Audit in y^e presence of Georg Webbe,
vic. John Grenhill, Roger Marks, Walter Marks, &c.

Receaved of	John Grenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	Widdow Hancock for y ^e vse of	5£	10s
	John Jurdan for y ^e vse of	40s	4s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	John Marks for y ^e vse of	20s	

Also a certaine summe of 8s 9d, which was behind in
William Hancocks pay, was now brought in 8s 9d

The Main stock for y ^e poore was left remain- ing in y ^e hands of	John Grenhill	4£
	Walter Marks	10£
	Georg White	4£
	John Jurden	40s
	Thomas Langfeild	40s
	Thomas Symmes	40s

The other 5£, which was in y^e hands of William Hancock,
was at this vestrie to be let forth: there remaining
of it—

in y ^e hand of	Jeremie Deane	50s
	Walter Bruer	20s
	Widdow Hancock	30s

The receits above receaved came to y^e summe of 58s 9d

There remained behinde, of y^e old yeares rent to be brought
in 10s

The former receits were, by y^e generall consent of y^e
whole vestrie, committed into y^e hands of mee Georg Webbe,
Vicar, to be disbursed; w^{ch} was done in this manner.

Imprimis to Richard Whitlock for Widdow Godwins rent	10s	Summe of this expense 31s
Item to Thomas Silverthorne for Andrie Francis rent . . .	8s	
Item to Widdow Sheppeard for a paire of shoes	2s	
Item to Agnes Harding for a paire of shoes	2s	
Item to Widdow Godwin at five severall tymes in her sicknes	5s	
Item to Richard Crow in his sicknes	1s	
Item to Widdow Whatly of y ^e lane	1s	
Item to Widow Crockson at 3 severall tymes	2s	

To y^e residue yeat remaining, viz. 19s & 9d, I laid, out
of mine owne, (w^{ch} is to be deducted out of y^e receits at y^e
next audit) 30s 3d; w^{ch}, in y^e whole amounting to 50 shil-
lings, was laid out in gray freeze for them, and thus distri-
buted:—

Imprimis to Georg Shord to make him a ierkin	2 y ^{ds} & half
Item to two of widdow Gambles children for coats	4 y ^{ds}
Item to Jane daughter of Widdow Griffin for a coat cloath	3 y ^{ds}
Item to Grace daughter of Widdow Crow for a coat cloath	3 y ^{ds}
Item to Margerie Aiers for a gowne cloath	5 y ^{ds}
Item to Georg Drinckwaters daughter for a coat cloath .	3 y ^{ds}
Item to Roger sonne of Widdow Tynnis for a coat cloath .	2 y ^{ds} & half

Item to Matthias sonne of Roger Winsloe for a coat cloath	3 y ^{ds}
Item to Zacharie sonne of W ^m Winsloe for a coat cloath .	2 y ^{ds} & 3 q ^{rs}
Item to Widdow Whatlies daughter	2 y ^{ds}
Item Andrie Fraunces daughter	2 y ^{ds} & q ^r
Item to John Bruers sonne	2 y ^{ds}
Item to Widdow Crow	3 y ^{ds}
Summe of this expense 50s.	

Anno Domini 1613 Jacobi 11 vppon the Feast of St Steuen,
vz Decemb. 26 was made this Audit in y^e presence of
Georg Webbe, Vicar, John Grenhill, Roger Marks,
Roger Martin, Walter Marks, and others.

Receaved of	John Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	John Jurden for y ^e vse of	40s	4s
	Jeremie Deane for y ^e vse of	50s	5s
	Walter Bruer for y ^e vse of	20s	2s
	John Marks for y ^e use of	20s	
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Widdow Hancock for y ^e vse of	30s	3s

Brought in at this Audit			58s
And of Georg White for y ^e last yeare			8s

Laid out:—

Inprimis to mee Georg Webbe, vic. w ^{ch} before I had laid out as appeareth in y ^e former page	30s	3d
Item to Thomas Silverthorne for Andrie Frauncis rent	8s	
Item to Andrew Eliot for his brother Williams sonne	8s	
Remaining behind to be distributed	18s	9d
Whereof 12s remain yeat to be collected of Georg White, 8s 4d of John Marks.		
The other Six was distributed Januarie 29th.		

Anno Domini 1614 Jacobi 12 vppon y^e feast of St Steven,
vz Decemb. 26, was made this Audit in y^e presence of
Georg Webbe, vicar, Roger Martin, churchwarden,
Roger Marks, Anthonie Stileman, Walter Marks, and
others,

Receaved of	John Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	John Jurden for y ^e vse of	40s	2s
	Jeremie Deane for y ^e vse of	50s	5s
	Walter Bruer for y ^e vse of	20s	2s
	John Marks for y ^e vse of	20s	
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Widdow Hancock for y ^e vse of	30s	3s

Summa recepti			56s
Remaining behind			2s
2 E 3			

Laid out of this receipt.	Inprimis to Thomas Silverthorne for Andrie	
	Frauncis her rent	8s
	Item to Joanne Shord to pay a debt to Stranton	6s 8d
	Item a pair of shoes for Margerie Aiers . . .	1s 8d
	Item to Widdow Harding at five severall times	3s 6d
	Item to John Tillin	2s
	Item to Widdow Crow in her sicknes at severall times	5s 6d
	Item to Widdow Crow the younger for keeping her in her sickness	4s
	Item to Georg Drinckwaters wife	2s
	Item to Widdow Sheppard	2s
	Item to Widdow Whatly	3s
	Item to Goodwife Maiol w th Shords daughter .	5s
	Item to Richard Martin at severall times in his sicknes	4s
	Item to William Brownes wife	2s 6d
	Item to Thomas Wastfield	2s 6d
	Item to Roger Winsloes wife	2s
	Item to Shords sonne for Widdow Griffin . .	

Anno Domini 1615 Jacobi 13, vppon y^e feast of St Steuen was made this Audit in y^e presence of [left blank in original].

Receaved of	John Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Jurdan for y ^e vse of	40s	4s
	John Marks for y ^e vse of	20s	
	Walter Bruer for y ^e vse of	20s	2s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	George Webbe for y ^e vse of	6£	12s
	Thomas Hayward for y ^e vse of	4£	8s

Thomas Crooke gave at this vestrie, towards the encrease of this stock 20s

Anno Domini 1616 Jacobi 14 vppon a vestrie holden vppon y^e feast of St Steuen was made this audit.

Receaved of	John Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg White for y ^e vse of	4£	8s
	Georg Webbe for y ^e vse of	7£	14s
	Jeremie Deane for y ^e vse of	3£	6s
	John Jurdan for y ^e vse of	40s	4s
	John Marks for y ^e vse of	20s	
	Walter Bruer for y ^e vse of	20s	2s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Thomas Hayward for y ^e vse of	4£	8s

Remaineth in y ^e hands of	John Greenhill	4£
	Walter Marks	10£
	Georg Webbe	8£
	Georg White	4£
	Jeremie Deane	3£
	Walter Bruer	20s
	Thomas Langfeild	40s
	Thomas Symmes	40s
	Thomas Hayward	4£
	John Marks	3£

At this vestrie was brought in, by Robert Fennell, 20s; w^{ch} was giuen, to y^e augmenting of y^e poores stock, by John Ellice alias Bruer; * w^{ch} was inserted to y^e stock as is above specified.

Anno Domini 1616 Jacobi 14.

At an other vestrie, vppon the 16 day of Januarie within the same yeare,† in the presence of Georg Webbe, Roger Martin, Walter Marks, Henrie Grenhill, Robert Fennell, John Marks, &c, wth generall consent, the monie receaued for y^e poores stock was thus imploied:—

Bought of William Morris of Troubridg in gray frize, twen- tione yards and three quarters of an yard, price . .	31s 6d
Item bought of Allin Bolwell in gray frize 4 yards and three quarters, value	7s
Item bought of Roger Crook in canuas cloath five els and half quarter, price	5s 2d
Giuen in monie to Widdow Harding	4s
Item to Widdow Whatly y ^e younger	2s 6d
Item to y ^e same Widdow Whatly in canvas—2 elles and a qu ^r	
Item to Widdow Hancock alias Tynnis in canuas—2 elles and a qu ^{ter}	
Item to Widdow Griffin in canuas—1 ell q ^r & q ^r q ^r	
Item to John Wastfield in frize—2 y ^{ds} & half	
Item to Robert Hancocks wife in frize—4 y ^{ds} & half	
Item to Margerie Aiers in frize—4 y ^{ds} & half	
Item to Matthias Mannings in frize—3 y ^{ds} & half	
Item to Roger Winsloe in frize—3 y ^{ds}	
Item to Georg Drinckwater in frize—2 y ^{ds} & 3 qu ^{ters}	
Item to Thomas Read in frize—2 y ^{ds} q ^r & q ^r q ^r	
Item to John Bruer in frize—2 y ^{ds} q ^r & q ^r q ^r	
Item to Matthew Michel in monie	6d
Item in monie to Marie Browne to buy shoes	2s 6d
Item to Widdow Harding, in her sicknes Feb. 14	4s
Item to Robert Hancock	5s
Item to Widdow Hedges at four severall tymes	4s
Item to Margerie Aiers a pair of shoes	1s 10d
Item to Minetie of Weast Ashton	
Item to Widdow Whatly of Weast Ash- ton	} out of that rate w ^{ch} Silverthorne gave ‡. . . .
Item to Julian Bailly of Weast Ashton	
Item to Ibit Dill	1s

* That is, Ellice alias Bruer was the donor; the money being paid, after his death, by death, by the hands of Fennell. The same Vestry Minutes elsewhere show that John Ellice had just died, and that Fennell was then churchwarden.

† It must be remembered that the years then began on the 26th March, and ended on the 25th March following.

‡ See after, end of year 1618, where it is shown that this is the interest of a gift.

Item to Widdow Young	2s
Item to Roger Winsloes wife	2s

Received, moreover, that w^{ch} was behind of Georg White 8s

Which was thus distributed :—

Inprimis to Widdow Tinnis	2s	6d
Item to Robert Hancock	3s	4d
Item to Matthew Michel		6d
Item to Wastfield		6d
Item to Widdow Hedges		6d
Item to Marie Browne		6d

Anno Domini 1617 Jacobi 15.

At a vestrie held Decemb. 26 in y^e presence of Georg Webbe, vicar, Roger Martin, Georg Marks, John Greenhill, Walter Marks, John Marks, &c.

Received of	John Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg Webbe for y ^e vse of	8£	16s
	Georg White for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Thomas Hayward for y ^e vse of	4£	8s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Richard Brewer for y ^e vse of	20s	2s

Remaining in y ^e hands of	John Greenhill	4£
	Walter Marks	10£
	George Webbe	8£
	Georg White	4£
	Jeremie Deane	3£
	John Marks	3£
	Thomas Hayward	4£
	Thomas Langfeild	40s
	Thomas Symmes	40s
	Richard Brewer	20s

Out of this was disbursed :—

Vppon 24 yards of frize	34s	6d
for 30 elles of canuas	32s	6d

Thus distributed :—

The frize.		The canvas.	
William Winsloe	3 y ^{ds}	Widdow Harding	2 elles
Widdow Cambel	3 y ^{ds}	Roger Winsloe his wife	2 els
Agnes Rudducks	3 y ^{ds}	Ibit Tillin	2 els & half
Margerie Tinnis	3 y ^{ds} & qu ^{ter}	Hugh Winsloe	2 els & half
Andrie Frauncis	3 y ^{ds} & qu ^{ter}	Thomas Read	2 els & half
Thomas Nash	4 y ^{ds} & half	Katherin Griffin	2 els
Georg Drinckwater	2 y ^{ds} & half	Shefton Waights wife	2 els
Hugh Winsloe	2 y ^{ds} & half	Marie Browne	2 els & qu ^{ter}
		Thomas Wastfield	2 els & qu ^{ter}
		Margerie Aiers	2 els & qu ^{ter}
		Widdow Young	2 els
		Edith Shepperd	2 els
		John Brewer	2 els
		Matthias Mannings	3 els

To Weast Ashton poore	4s
Item to Matthias Mannings	2s 6d
Item to Henrie Harding	1s
Item to Widdow Harding	1s
Item to Margerie Aiers	2s
Item to Marie Browne	1s
Item to Thomas Wastfield	1s
Item to Roger Winsloe	1s 6d

Anno Domini 1618 Jacobi 16.

Vppon Decemb. 25 at a vestrie held in y^e presence of Georg Webbe, vicar, Georg Marks, Henrie Greenhill, Roger Martin, Walter Anthonie Stileman, John Marks, &c.

Received of	Henrie Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg Webbe for y ^e vse of	8£	16s
	Georg White for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Thomas Hayward for y ^e vse of	4£	8s
	Thomas Langfeild for y ^e vse of	2£	4s
	Thomas Symmes for y ^e vse of	2£	4s
	Richard Brewer for y ^e vse of	1£	2s

Summa totalis 4£ 2s

Remaining in y ^e hands of	Henrie Greenhill	4£	Summa totalis 41£
	Walter Marks	10£	
	Georg Webbe	8£	
	Georg White	4£	
	Thomas Hayward	4£	
	Jeremie Deane	3£	
	John Marks	3£	
	Thomas Langfeild	40s	
	Thomas Symmes	40s	
	Richard Brewer	20s	

Out of this disbursed:—

Inprimis for frize at Bristow [Bristol] 36 yards: whereof 24 yards at 20d the yeard, the other 12 at 19d the yeard 2£ 11s 4d
Item in canvas, 6 elles at 14d the ell 7s

Which was distributed:—

Frize.		Linnen.	
To y ^e widdow Harding . . .	6 yards	To Margerie Aiers . . .	2 ells
To Margerie Aiers . . .	4 y ^{ds} 3 q ^{ters}	To Hugh Winsloe . . .	2 elles
To Zacharie, sonne of William Winsloe . . .	1 y ^d & half	To Andrie Frauncis . . .	2 elles
To Shefton Waights wife . .	3 y ^{ds} & q ^r		
To Thomas Wastfield . . .	2 y ^{ds} & half		
To Widdow Gamble . . .	2 y ^{ds} & half		
To Thomas Read . . .	1 y ^d & q ^r		
To Hugh Winsloe . . .	2 y ^{ds} & half		
To John Brewer . . .	3 y ^{ds} 3 q ^{rs}		
To Roger Winsloe . . .	2 y ^{ds} & half		
To Widdow Tynnis . . .	3 y ^{ds} & q ^{rs}		
To Georg Drinckwater . . .	2 y ^{ds} & half		

In monie :—

To Widdow Young for a pair of shoes	2s	2d
Item in monie at two severall tymes	2s	
Item to Oswald Martins wife at three severall tymes	3s	
Item to Mathew Michel	2s	6d
Item to y ^e Widdow Tinnis at y ^e placing her sonne apprentice	4s	
Item to John Guy		6d
Item to Roger Winsloes wife in her sonnes sicknes		18d
Item paid to y ^e poore of Weast Ashton, out of William Silverthorne's gift, y ^e monie in Thomas Hayward's hand :—		
Inprimis to old Minetie	3s	6d
Item to Widdow Whatly	1s	6d
Item to Julian Bailly	1s	6d
Item to John Minitie	1s	6d

Anno Domini 1619 Jacobi 17.

At a vestry held decemb. 25 in y^e presence of Georg Webbe, vicar, Gifford Long esq., George Marks, Roger Martin, Henrie Greenhill, Walter Marks, Anthonie Stileman, John Marks, Georg White, Thos. Silverthorne, &c.

Receaved of	Henrie Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George Webbe for y ^e vse of	8£	16s
	George White for y ^e vse of	4£	8s
	Thomas Hayward for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Richard Brewer for y ^e vse of	20s	2s

Summa totalis 4£ 2s

At this vestrie George White brought in y^e four pound which he had in his hand; which was afterward let to William Maire of Hinton.

Remaining in the hand of	Henrie Greenhill	4£	{	Jeremie Deane	3£	Sum
	Walter Marks	10£		John Marks	3£	
	George Webbe	8£		Thomas Langfeild	40s	
	William Mayre	4£		Thomas Symmes	40s	
	Thomas Hayward	4£		Richard Brewer	20s	
						41£

Out of y^e former receit was disbursed as followeth :—
Imprimis, to Robert Symmes, whose wife lately before being deceased, and manie small children lying upon his hands, was by generall consent delivered 10s

Bought at St. Paul's faire at Bristol in frize, 52 yards at 15d y ^e yd	3£	5s
The carriage of them from thence		3s 4d

Distributed in manner following, in y^e presence of George Webbe, Nicholas Pashient, churchwarden, &c :—

Inprimis to Margerie Aiers	4 y ^{ds} 3 q ^{rs}
Item to Zacharie sonne of William Winsloe	1 y ^d & half
Item to Shefton Waights wife	3 y ^{ds} & half
Item to Thomas Wastfield	2 y ^{ds} & half
Item to Thomas Wastfields wife	5 y ^{ds}

Item to James Gamble	2 y ^{ds} & half
Item to William sonne of Thomas Read	2 y ^{ds} & q ^r
Item to Hugh Winsloe	2 y ^{ds} & half
Item to Widdow Harding	6 y ^{ds}
Item to John Brewers daughter	2 y ^{ds} 3 q ^{rs}
Item to Roger Winsloe his sonne	2 y ^{ds} & half
Item to Roger Tinnis	1 y ^d & half
Item to John Brewer	2 y ^{ds} & half
Item to Mathew Michel	2 y ^{ds} & half
Item to Oswald Martins sonne	2 y ^{ds} & q ^r

For Weast Ashton.

To widdow Whatly	2 yds
To John Minetie	2 yds and half
To Julian Baily	3 yds

Deliuered in monie.

To widdow Young	1s
To Matthias Mannings	1s
To Mathew Michel	6d
To Thomas Read	1s
To widdow Hancock	6d

Anno Domini 1620, Jacobi 18.

The vsvall day for this account, being decemb. 25, being at that present, y^e day for y^e chusing of y^e knights for y^e shire for y^e Parliament then ensuing: and by reason whereof y^e chiefest of y^e neighbourhood being at Wilton.* This vestrie was put of vntill another day. And then, vppon y^e [left blank].

Received of	Henrie Greenhill for y ^e vse of	4£	
	Walter Marks for y ^e vse of	10£	20s
	Georg Webbe for y ^e vse of	8£	16s
	William Maire for y ^e vse of	4£	8s
	Thomas Hayward for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Richard Brewer for y ^e vse of	20s	2s

At this vestrie came Elizabeth the widdow of Robert Fennell late deceased, and brought in 20s which was given by y^e last will and testament of him the said Robert Fennell to the use of the poore.

Anno Domini 1621, Jacobi 19.

At a vestrie vppon Decemb. 27 in y^e presence of Georg Webbe, vicar, Mr. Gifford Long, Esquire, Walter Marks, William Marks, Anthonie Marks, John Whelply, Georg White, Robert Bartlet, Henrie Martin, John Whatly and others, this audit was made.

* Very interesting proof is thus incidentally afforded of the constant habit, at that time, of all the "*chiefest of the neighbourhood*" to fulfil their duties by attending the Vestry Meetings.

Received of	Henrie Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg Webbe for y ^e vse of	8£	16s
	William Maire for y ^e vse of	4£	8s
	Thomas Hayward for y ^e vse of	4£	
	Jeremie Deane for y ^e vse of	3£	
	John Marks for y ^e vse of	3£	6s
	Thomas Langfeld for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Richard Brewer for y ^e vse of	20s	
	Anthonie Stileman	20s	

Ap. 22, 1622 The accompt of Henry Greenhill, Walter Marks, and Anthonie Marks,* for the Parishe stocke for the poore of Steeple Ashtone in An. Dom. 1621-1622.

Received of for this yeare	Mr. Greenhill for the vse of for a yeare	4£	8s
	Thomas Hayward for the vse of	4£	8s
	Jeremye Deane for the vse of	3£	6s
	Richard Brewer for the vse of	20s	2s
	Anthonye Stileman for the vse of	20s	2s

Received for Arrerages, viz	Georg Greenhill for the former yere past		8s
	Walter Marks for the said former yere		20s
	Jeremye Deane for the same		6s
	Thomas Hayward for the like		8s
	Richard Brewer for the like		2s
	Anthony Stileman for the like		2s

Summa 46s

Totull of receipts is 3£ 12s

Bestowed	for three score and eight yards of frize	4£	3s
	for five elles of canuas	5s	3d
	for bread for the poore	13s	9d

Memorandum, that Steeple Ashtone receiued all Thomas Hayward's monie this yeare ; halpe of it being due to Weast Ashtone, and therefore to receiue the whole the next yeare.

The accompt of Anthony Martin for the distribution of 6s charity given to y^e poore by Mr. Whatly deceased, issuing out of lands in West Ashtone now in y^e hands of Henry Flower. } 6s

Distributed by y^e Minister and Churchwardens as followeth, viz.

By Mrs. Flower, unto	— Young	1s
	Joanne Winsloe	1s
	Anth. Whatly	1s
	Uxor Richard Tucker	1s
	Margaret Bayly	6d
	Alice Read	6d
	Thos. Rawlins.	6d
	Wal. Kynge	6d

* Appointed "distributers" for the year. See the end of the same year; 1623; etc. It would seem that, from this time, the disposition of the money was entrusted to an annually chosen body. As these kept their own accounts of the distribution, the particulars do not, hereafter, appear on the Vestry Minutes. (See before, p. 496.) It will be seen, by reference to p. 510, that this Parish had, half a century before, appointed "distributors." Though it seems to have been at first, after the 43rd Eliz., thought unnecessary to appoint those officers, the old practice was, in the above year, returned to.

Anno Dom. 1622.

At a vestry holden Decemb. 27 in y^e presence of Mr. Eyre,
George Marks, Anthony Stileman, Walter Mks, An-
thony Marks, John Marks, Roger Crooke, and others.

Receipt	Henry Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	Georg Webb, clerk, for y ^e vse of	8£	16s
	William Mayre for y ^e vse of	4£	8s
	Thos. Hayward for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Richard Knee and Thomas Langfeild for y ^e vse of	40s	4s
	Thomas Symmes for y ^e vse of	40s	4s
	Richard Brewer for y ^e vse of	20s	
	Anthony Stileman for y ^e vse of	3£	6s

It is soe ordered, at this meeting, that they that have any of this money
should enter into bands, with his suretye, as shall be approued of.

Chosen to be distributors : * Mr. Stileman
Roger Crooke
William Stileman

Anno Domini 1623.

At a vestrie held Decemb. 26, in presence of George
Webbe, George Marks, Henrie Greenhill, Walter Marks,
Henrie Mortimer

Receaved of	Henrie Greenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George Webbe for y ^e vse of	8£	16s
	William Maire for y ^e vse of	4£	8s
	Thomas Hayward for y ^e vse of	4£	8s
	Jeremie Deane for y ^e vse of	3£	6s
	John Marks for y ^e vse of	3£	6s
	Richard Knee for y ^e vse of	2£	4s
	Thomas Symes for y ^e vse of	2£	4s
	Richard Brewer for y ^e vse of	20s	
	Anthonie Stileman for y ^e vse of	3£	

Weast Ashton distributed thus :—

Walter Stone	6d	Julian Baily	6d
Widdow Whatly	6d	John Minitie	6d
Widdow Whatly jun ^r	6d	Thomas Silverthorne	6d
Margaret Baily	6d	Philip Cross	6d

Chosen for distributors of y^e said monie received :—

Henrie Martin
Edward Bennet
John Marks

Anno Domini 1624.

At a vestrie held Decemb. 27 in y^e presence of Georg
Webbe, Georg Marks, Henrie Greenhill, Anthonie Stile-
man, Henrie Martin, Walter Marks.

* That is, for the year following. See note on preceding page.

Receaved of	Henrie Grenhill for y ^e vse of	4£	8s
	Walter Marks for y ^e vse of	10£	20s
	George Webbe for y ^e vse of	8£	16s
	William Maire for y ^e vse of	4£	
	Thomas Hayward for y ^e vse of	4£	
	Jeremie Deane for y ^e vse of	3£	
	John Marks for y ^e vse of	3£	6s
	Richard Knee for y ^e vse of	2£	
	Thomas Symmes for y ^e vse of	2£	4s
	Anthonie Stileman for y ^e vse of	3£	6s
	Richard Brewer for y ^e vse of	1£	

Anno Domini 1625, 26 Decemb.

The bond } taken up }	Henrie Greenhill for y ^e vse of	4£	8s
	Paid in also the 4£ principall.		
	Walter Marks for y ^e vse of	10£	20s
	Mr. D. George Webbe for y ^e vse	8£	16s
	William Mayre for the vse of	4£	8s
	Thomas Hayward for the vse of	4£	8s
	Jeremie Deane for the vse of	3£	6s
	John Marks for the vse of	3£	6s
	Richard Knee for the vse of	40s	
	Thomas Symmes for the vse of	40s	
	Anthony Stileman for the vse of	3£	6s
	Richard Brewer or Mr. Doctor Webb for y ^e vse of	20s	2s

Totall of y^e }
stock 45£ }

Item received of Henry Greenhill, as given for a stock by
John Grenhil his father, to the poore of Steple
Ashton 20s

Chosen for the distributers :—

Henry Martin,
John Marks.

Anno Domini 1626.

Geo. Webbe	9£	15s
Walter Marks	10£	16s
William Maire	4£	6s 8d
Thomas Hayward	4£	6s 8d
Jeremie Deane	3£	
John Marks	3£	5s
Richard Knee	2£	3s 4d
Thomas Symmes	2£	
Anthonie Stileman	3£	5s
John Bruer	5£	8s

It is aggreed that those who have anie of the poores
stock must bring in their monie or els renew their bands by
the Epiphanie.

Anno Domini 1627.

Geo. Webb, Doctor of Divinity	9£
Walter Marks	10£
William Mayre	4£

Thomas Hayward	4£	
Jeremy Deane	3£	
John Marks	3£	5s
Richard Lanfield	2£	
Thomas Syms	2£	
Anthony Stileman jun ^r	3£	5s
John Brewer	5£	8s
George Mark gent ^a	1£ 10s	

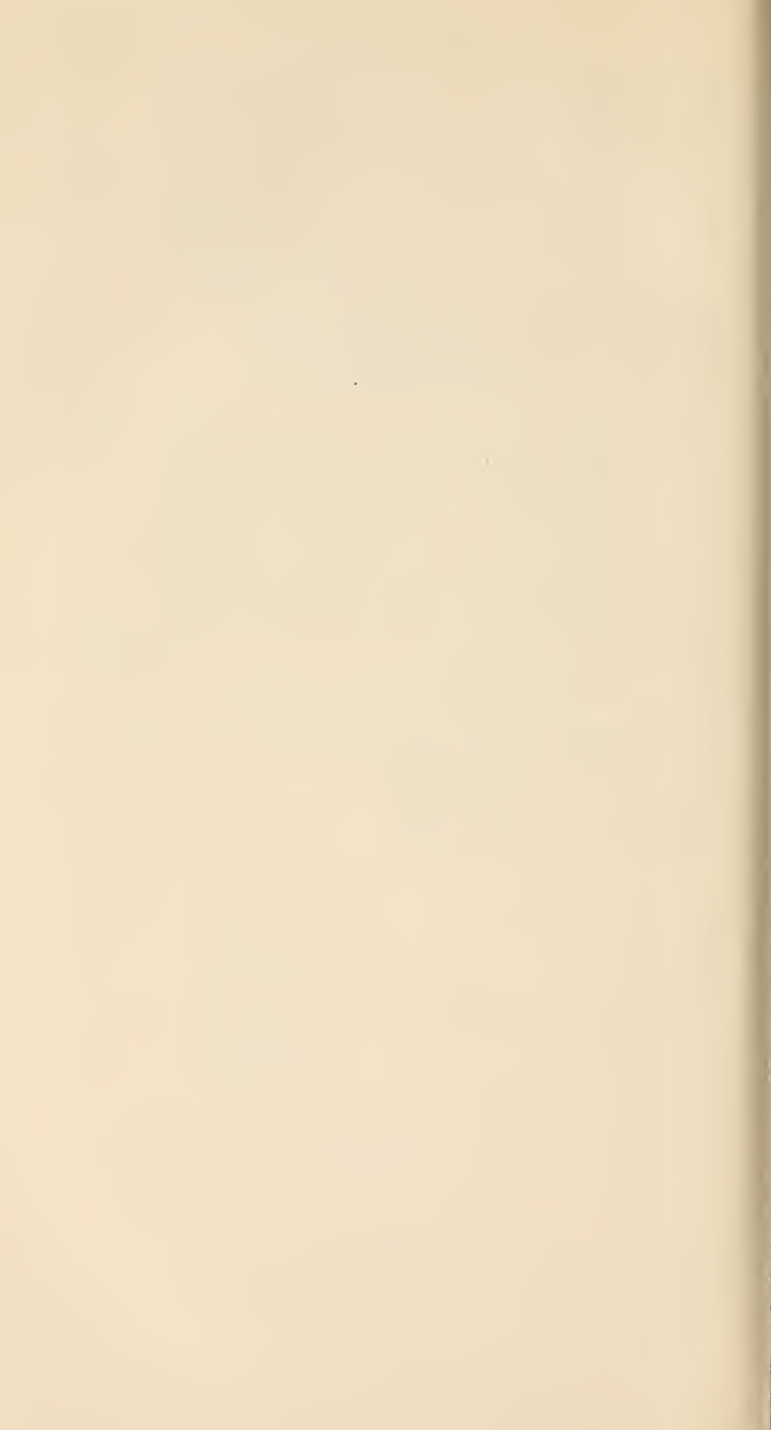
At a vestrie held Decemb. 26 Anno Domini 1628 in y^e pre-
 sence of George Webbe, Doctor of Divinitie, Edward
 Martin & John Palmer, Churchwardens, George Marks,
 Henrie Martin, Anthonie Marks, Roger Crooke, John
 Marks, Anthonie Martin, Edmund Lewes, &c.

Geo. Webbe	9£	13s 4d
Walter Marks	10£	
William Mayre	4£	4s 10d
Thomas Hayward	4£	6s 8d
Jeremie Deane	3£	
John Marks	3£	4s 10d
Richard Knee	2£	
Anthonie Stileman	3£	4s 10d
Thomas Synmes	2£	
John Brewer	5£	8s
Geo. Marks	1£ 10s	2s 4d

Paid out of Will^m Mayres band, 20s.
 Soe that there remaineth in his hand but 3 *lib*.

Chosen, besides the Overseers and churchwardens, for y^e
 distribution of y^e poore stock, y^e yeare 1629:—

William Marks,
 Henrie Martin,
 Roger Crooke.



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* This Act has been quoted, in the first four of these references, as "10 Anne, c. 20;" the large folio edition of the statutes, published by the Record Commission, having been the one used; in which edition the chapters of many statutes are, very injudiciously, and much to the inconvenience of those who consult it, frequently thus varied from those given in the common editions of the Statutes.

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† Some cases, from Coke and the older Reporters, are not cited by name, but by the page of the Reporter. These will be found in the preceding list.

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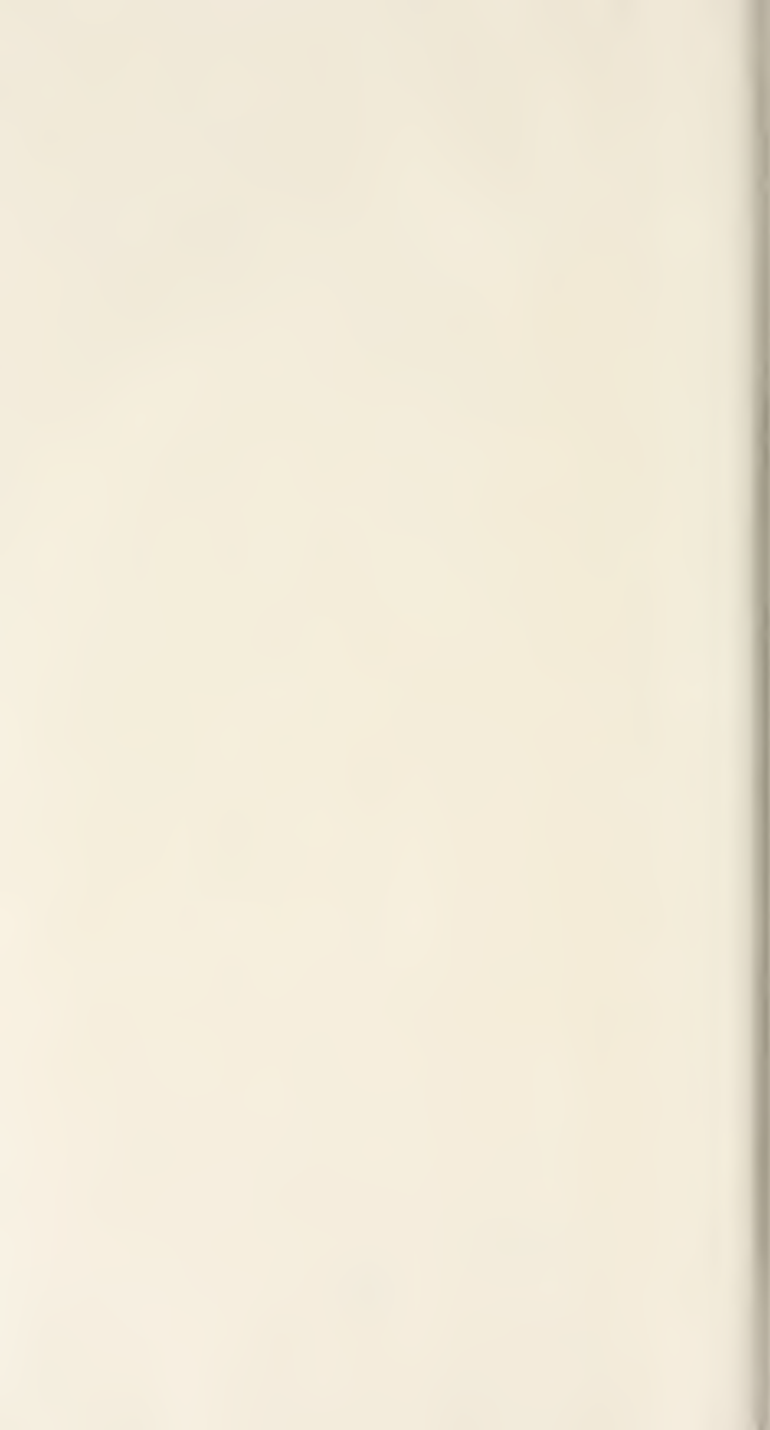
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